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# **NAVAL POSTGRADUATE SCHOOL**

**MONTEREY, CALIFORNIA**

## **THESIS**

**PRIVATE MILITARY COMPANIES:  
ANALYZING THE USE OF ARMED CONTRACTORS**

by

Michael D. Kornburger  
Jeremy R. Dobos

December 2007

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**PRIVATE MILITARY COMPANIES:  
ANALYZING THE USE OF ARMED CONTRACTORS**

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**MASTER OF SCIENCE IN DEFENSE ANALYSIS**

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## **ABSTRACT**

“Private Military Companies: Analyzing the Use of Armed Contractors” explores the critical issues that influence the decision to utilize private military companies (PMC) and armed contractors in support of U.S. military operations. The critical issues identified in the thesis address a combination of government, military, and public concerns with the private military industry. Understanding of these critical issues will assist policy makers in determining the validity of the PMC concept and extent to which the U.S. government could utilize armed contractors and consider privatization of combat forces as a viable option to satisfy certain military requirements of this nation. The thesis also expands on the link between the expansion in the private military industry and the shortage of U.S. government resources to satisfy the requirements of its foreign policy decisions. This work focused on the legitimate use of PMCs and armed contractors to support U.S. government and military operations.



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## I. INTRODUCTION

The Private military industry is now a reality. Its emergence raises possibilities and dilemmas that are not only compelling and fascinating in a theoretical sense, but also driven by their real world relevance. – *Peter W. Singer, 2004*<sup>1</sup>

Outsourcing of military-related security, training, and logistics functions has been the direct result of the downsizing of military capabilities after the end of the Cold War and the recent increase of foreign policy commitments. More than a decade after the Cold War, the military is now stretched to its limits with multiple large-scale deployments and numerous low-intensity conflicts worldwide. The demands on the military to support these operations continue to grow.<sup>2</sup> In an effort to reduce some of these demands on our military, the U.S. Department of Defense (DoD) and Department of State (DoS) have turned to the private sector as part of an overall trend in the privatization of certain military functions.<sup>3</sup>

The most recent requirements come from the multiple large-scale military operations in the Middle East as part of the Global War on Terror. In order to respond to policy changes, the government needed to find additional resources to conduct these operations, specifically in Iraq.<sup>4</sup> The options of expanding the military or obligating large portions of the National Guard and Reserves to active duty were not politically feasible or desirable. So the government turned to the private sector and private military companies (PMCs) to reduce the demands on the military.

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<sup>1</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 242.

<sup>2</sup> Defense Science Board Task Force, *Deployment of Members of the National Guard and Reserve in the Global War on Terrorism*, September 2007 [report online]; available from <http://www.acq.osd.mil/dsb/reports.htm>; Internet; accessed 22 November 2007.

<sup>3</sup> Jennifer Elsea and Nina Serafino, "Private Security Contractors in Iraq: Background, Legal Status, and Other Issues," *CRS Report for Congress* (Congressional Research Service, 21 June 2007), 1-6.

<sup>4</sup> Steve Fainaru, "Iraq Contractors Face Growing Parallel War" *Washington Post Foreign Service*, 16 June 2007 [news article online]; available from <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/15/AR2007061502602.html>; Internet; accessed 15 August 2007.

This expanded use of PMCs by the government has developed into a reliance on the private military industry (PMI) to support U.S. military operations. The DoD and DoS now consider PMCs an integral component of the total force. In January 2007, during an appearance before the Senate Arms Service Committee, the top commander in Iraq, U.S. Army General David H. Petraeus, said that “he counts the thousands of contract security forces among the assets available to him to supplement the limited number of U.S. and Iraqi troops to be used for dealing with the insurgency.”<sup>5</sup> The number of contractors has steadily increased to the current state of about 180,000 (estimated) contractors working in Iraq, of which about 48,000 are armed contractors providing security services.<sup>6</sup> In total, these contracted personnel exceed the total number of U.S. military ground forces operating in Iraq, as of December 2007. Currently, the roles of contracted personnel are limited to security and support roles only, and exclude direct action or offensive use. In the near future, if policy requirements continue to exceed available resources, the government may be forced to expand the use of PMCs and armed contractors.

Yet to be determined is how the U.S. government’s use and reliance on PMCs will unfold in a democratic society. The decision to use PMCs and armed contractors has placed the U.S. government in a vulnerable position. The government is committed to its foreign policy and the use of PMCs to support this policy; the government needs to ensure success of privatization. If support for the PMC concept dwindles, then, realistically, the government may be forced to change its policy on key issues, such as reinstituting a draft or limiting its foreign interventions.

## **A. PURPOSE**

“Private Military Companies: Analyzing the Use of Armed Contractors” explores the legitimate use of PMCs and armed contractors to support U.S. government and

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<sup>5</sup> Walter Pincus, “Security Contracts to Continue in Iraq: New Top Commander Counts Hired Guards Among his Assets,” *Washington Post*, 4 February 2007 [newspaper online]; available from <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/03/AR2007020301372.html>; Internet; accessed 10 February 2007.

<sup>6</sup> Peter Singer, “Counterproductive: Private Military Contractors Harm the Counterinsurgency effort in Iraq,” *Armed Forces Journal* (November 2007), 36-39.

military operations. Its primary objective is to identify and analyze the critical issues involved in the use of armed contractors and to examine the expanded roles PMCs might play in the execution and implementation of national and defense policies. A case study of Blackwater Security Consulting – a widely known, American owned and based PMC that provides the service of armed contractors – informs the discussion. The Blackwater case study was chosen because Blackwater epitomizes the PMI and follows the previously identified trends of expansion and growth.

There has been a steady increase in the number of contractors supporting U.S. military operations and remarkable expansion of the PMI over the past decade.<sup>7</sup> As referenced in Chapter III, the total number of contractors in Iraq has steadily increased to almost 180,000, as of November 2007, supporting U.S. military operations.<sup>8</sup> From Bosnia to Iraq, outsourcing is gaining traction, and the U.S. government has developed a dependence on its services.<sup>9</sup> This dependence by the U.S. government is supported by the contractor-to-soldier ratio. During the first Gulf War, the ratio was approximately one contractor to every 50 military personnel. Currently in Iraq, it appears that the ratio is approaching one contractor for every soldier.<sup>10</sup>

Although the PMC concept has demonstrated its merit in these engagements, its expansion may be limited as a consequence of the issues of accountability that have surfaced in the Blackwater case.<sup>11</sup> It is anyone's guess as to the outcome of the events in Iraq on September 16, 2007, when 17 Iraqi civilians were shot by Blackwater employees.

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<sup>7</sup> David Isenberg, "A Fistful of Contractors: The Case for a Pragmatic Assessment of Private Military Companies in Iraq," *Research Report 2004.4* (British American Security Information Council, September 2004), 7, 19.

<sup>8</sup> Peter Singer, "Counterproductive: Private Military Contractors Harm the Counterinsurgency effort in Iraq," *Armed Forces Journal* (November 2007): 37.

<sup>9</sup> Marc Lindemann, "Civilian Contractors under Military Law," *Parameters* (Autumn 2007): 83-94.

<sup>10</sup> Isenberg, 7.

<sup>11</sup> Two sources were used: Jennifer Elsea and Nina Serafino, "Private Security Contractors in Iraq: Background, Legal Status, and Other Issues," *CRS Report for Congress* (Congressional Research Service, 21 June 2007); and John Broder and James Risen, "Armed Guards in Iraq Occupy a Legal Limbo," *The New York Times*, 20 September 2007 [newspaper online]; available from [http://www.nytimes.com/2007/09/20/world/middleeast/20blackwater.html?\\_r=1&ei=5087%0A&em=&en=2101831599e1231f&ex=1190433600&oref=slogin&pagewanted=print](http://www.nytimes.com/2007/09/20/world/middleeast/20blackwater.html?_r=1&ei=5087%0A&em=&en=2101831599e1231f&ex=1190433600&oref=slogin&pagewanted=print); Internet; accessed 24 September 2007.



The U.S. government extensively uses and relies on Blackwater contractors in military operations, but they are now being viewed by some experts and senior military officials as counterproductive to the efforts of the U.S. government and military.<sup>12</sup> Thus, it is incumbent on the government to address the concerns surrounding the industry and the PMCs, especially issues concerning regulation and oversight. This may be the opportune time for reform.

## **B. SCOPE AND ASSUMPTIONS**

This thesis examines only those issues involved with PMCs, contracted by the U.S. government, to provide armed support of U.S. military operations and will not address the following issues:

- Operational command and control mechanisms for contractors.
- PMCs hired to support other than overt operations.
- PMCs working for outside clients other than the U.S. government (states, governments, or other movements).

This work is bound by a set of assumptions that affect the extent to which the U.S. government will continue the utilization of PMCs and the policy decisions that influence their use:

- U.S. military maintains current uniformed force structure with no rapid increase in numbers.
- For the foreseeable future, U.S. foreign policy requirements will continue to exceed the resources of the U.S. government, and by extension, the military.
- The U.S. government continues the trend of privatization to fulfill its requirements; the DoD and DoS utilize PMCs in military operations.

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<sup>12</sup> Jonathan Finer, "Security Contractors in Iraq Under Scrutiny After Shootings," *Washington Post Foreign Service*, 10 September 2007 [newspaper online]; available from [http://www.washingtonpost.com/wp-dyn/content/article/2005/09/09/AR2005090902136\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2005/09/09/AR2005090902136_pf.html); Internet; accessed 10 February 2007.

- DoD and DoS acknowledge and accept PMCs as part of their overall force structure (Bosnia, Kosovo, OEF-Afghanistan, and OIF-Iraq).

## C. RESEARCH QUESTIONS

To what extent has the government considered privatization as a viable option to satisfy the force requirements of U.S. sanctioned irregular warfare operations and low intensity conflicts? In order to properly address this thesis question, a set of additional research questions investigate the recent trends in privatization and the use of armed contractors in support of U.S. military operations:

- Why has the PMI expanded?
- What is the role of PMCs in support of DoD and DoS operations?
- What are the critical issues that affect the use of armed contractors?
- What are the expanded roles that PMCs could perform in U.S. military operations in the future?
- What are the recommendations for reform in the use of PMCs?

## D. DEFINITION OF TERMS AND ACRONYMS

**Contractor:** Definition from AR 715-9: A U.S. citizen employed by a private military company that has been contracted by the U.S. government to support or augment government agencies in operations — other than war and wartime operations.<sup>13</sup>

**DoD:** Refers to the United States Department of Defense and those functions and operations associated with this government agency.

**DoS:** Refers to the United States Department of State and those functions and operations associated with this government agency.

**Inherently governmental functions:** Definition from AR 715-9: Those functions necessary to sustain combat operations, that are performed under combat

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<sup>13</sup> Army Regulation 715-9, *Contractors Accompanying the Force* (Washington DC: Department of the Army, 29 October 1999), 4.

conditions, and that require direct control by the military command structure and military training for their proper execution. This includes functions performed exclusively by military (active and reserve) who are trained for combat and the use of deadly force, where performance by a contractor or civilian would violate their non-combatant status under the Geneva Conventions or represent an inappropriate risk to military operations.<sup>14</sup>

**Mercenary:** The following definition is from Article 47 of Protocol I to the Geneva Conventions (1977).<sup>15</sup>

A mercenary is any person who:

1. Is specially recruited locally or abroad in order to fight in an armed conflict;
2. Does, in fact, take a direct part in the hostilities;
3. Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
4. Is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
5. Is not a member of the armed forces of a Party to the conflict; and
6. Has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

As stated in the CRS Report for Congress:

Under this definition, it appears that contracted personnel who are not U.S. nationals, the nationals of other coalition allies or Iraqi nationals, and who were hired to — and in fact do — take part in hostilities might be considered

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<sup>14</sup> Army Regulation 715-9, *Contractors Accompanying the Force* (Washington DC: Department of the Army, 29 October 1999), 21.

<sup>15</sup> Jennifer Elsea and Nina Serafino, “Private Security Contractors in Iraq: Background, Legal Status, and Other Issues,” *CRS Report for Congress* (Congressional Research Service, 21 June 2007), 14.

to be mercenaries, assuming the definition in Protocol I applies as customary international law in the context of the current hostilities in Iraq.<sup>16</sup>

**PMC:** Refers to private military companies that operate under the larger umbrella of the PMI. A PMC is a privately owned entity that is contracted by the government to provide military-type services in support of U.S. government and military operations. Included in this term are the organizational and administrative systems of the company that support its operational government and military contractors.

**PMI:** Refers to the private military industry as a whole, inclusive of all the PMCs that support U.S. government and its military operations.

## **E. OVERVIEW OF CHAPTERS**

### **1. Chapter II: Expansion of the Private Military Industry**

Chapter II outlines the historical and legal precedent of privatization in the development of the state. The collapse of the former Soviet Union led to several key events that fueled the re-emergence of the PMI in the modern era. In the years following the Cold War, U.S. foreign policy decisions would not only expand the PMI, but also the degree to which the U.S. government relies on the services of PMCs and armed contractors.

The PMI's increasing role in national security and military operations is not likely to recede in the foreseeable future. The resources that the U.S. government can bring to bear, and specifically the DoD and DoS, are not adequate for the growing number of requirements as a result of foreign policy decisions.

The final section focuses on the actions of Executive Outcomes in South Africa. Executive Outcomes was one of the first PMCs in the modern era after the Cold War, and its success, and set the example for PMCs. Other PMCs would emerge in its shadow and come to emulate the model set forth by Executive Outcomes.

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<sup>16</sup> Jennifer Elsea and Nina Serafino, "Private Security Contractors in Iraq: Background, Legal Status, and Other Issues," *CRS Report for Congress* (Congressional Research Service, 21 June 2007), 14.

## **2. Chapter III: Current Snapshot of Private Military Companies**

Chapter III provides a current snapshot of the PMI by taking a closer look at the roles and trends in contracting PMCs. PMCs fall into one of three categories: military provider firms, support firms, and consultant firms. The numbers of PMCs and contractors supporting U.S. military operations clearly illustrate the trends and reliance by the U.S. government on PMCs. In addition, this section covers the current legal framework that governs the actions of contractors operating in Iraq.

## **3. Chapter IV: Blackwater Case Study**

Chapter IV presents a case study on Blackwater USA that serves to highlight the difficulties and challenges of the PMI and provides an example of the privatization trend that has accelerated since the end of the Cold War. Blackwater is the name that is today synonymous with the modern PMC, and represents the good, the bad, and the ugly of the PMI.

## **4. Chapter V: Critical Issues of the Private Military Industry**

Chapter V explores the critical issues that influence the decision by policy makers to utilize PMCs and armed contractors in support of U.S. military operations. The critical issues outlined in this chapter address a combination of government, military, and public concerns with the PMI. These are the issues that need to be overcome before the U.S. government can consider the use of PMCs and armed contractors as a viable option in U.S. military operations.

## **5. Chapter VI: Building Frameworks for Private Military Companies**

Chapter VI discusses the legal and contractual frameworks that are needed to effectively integrate PMCs in U.S. military operations. PMCs are ready and willing to take on expanded roles, but decision makers need to carefully consider the issues that affect proper implementation of the PMC concept. The expanded roles that PMCs and armed contractors could perform are widespread and only limited by the authority given

to them by the U.S. government. As outlined in this chapter, revised frameworks are necessary before the U.S. government can consider the use of PMCs as a viable option to support U.S. military operations.

## **6. Chapter VII: Conclusion**

Chapter VII is an overview of the work presented in this thesis.

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## II. EXPANSION OF THE PRIVATE MILITARY INDUSTRY

PMCs have come a long way. Where as little as a decade ago they were limited to African war zones they have now assumed a leading role in the activities of the world's sole military superpower, as well as being a front and center actor in the daily life of Iraq. – *David Isenberg, 2004* <sup>17</sup>

With the U.S. government's increased reliance on armed contractors, the privatized security market has grown exponentially. As Peter Singer, a National Security Fellow at the Brookings Institute and renowned expert on the PMI wrote in 2003, the "privatized military industry is still in its relative infancy, but it appears that the true boom lies shortly ahead."<sup>18</sup> The customers for this industry at the present time are mainly nation-states; governments hire PMCs to supply a range of services from logistics to intelligence and armed security. The expansion of the PMI has generated both praise and criticism and has engendered new questions relating to national security. However, one trend seems clear: growth in the PMI is expected to continue. According to Peter Singer, "the evidence so far indicates that the industry will grow in size, scope, activity and resultant influence within the international security sphere."<sup>19</sup>

### A. HISTORICAL PRECEDENT

Since the beginning of recorded history, the private sector has been involved in war and the provision of war.<sup>20</sup> As warfare became more complex, specialization occurred in the manufacture of weapons, development of new tactics and procedures, and the financial aspects of waging war.<sup>21</sup> This specialization was not, and never was fully,

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<sup>17</sup> David Isenberg, "A Fistful of Contractors: The Case for a Pragmatic Assessment of Private Military Companies in Iraq," *Research Report 2004.4* (British American Security Information Council, September 2004), 7.

<sup>18</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 79.

<sup>19</sup> *Ibid.*, 190.

<sup>20</sup> Martin Van Creveld, *The Rise and Decline of the State* (New York: Cambridge University Press, 1999), 31, 158, 249, 330, 334.

<sup>21</sup> Robert O'Connell, *The Soul of the Sword: An Illustrated History of Weaponry and Warfare from Prehistory to the Present* (New York: Simon & Schuster, 2002).



the exclusive domain of the government. Indeed, the monopolization of violence by the state appears to be but an anomaly in the continuum of history. This anomaly has become accepted as the status quo in the modern age, and many analysts have perceived expansion of the PMI as eroding the modern state's monopoly on the use of force.<sup>22</sup> However, looking through the historical lens, it is perhaps more accurate to say that the private sector is only reclaiming functions that were relinquished to the state.

If the history of privatization is viewed in the form of a pendulum, then the re-emergence of privatization in military affairs is only a natural rebalancing of a sector that had swung towards the public domain. As the nation-state system expanded after 1648, the state took over many aspects of national life that were formerly controlled by the private sector. This trend appears to have reached its apex by World War II; states had extended public power into every aspect of private life, and included industry, health, formerly independent media, and even religion.<sup>23</sup> For example, the quintessential nation-state was the Nazi government of Germany. As stated by Minister of Propaganda Joseph Goebbels, "the only time the individual was free of state control was in his dreams."<sup>24</sup> The same phenomena also occurred in Stalin's Soviet Union. Under communism, the state controlled every aspect of life. It was the apotheosis of the complete victory by the public sector, in the form of the nation-state, over every aspect of the private sector.<sup>25</sup> The long march from Westphalia in 1648 had finally been accomplished.

It was soon realized, however, that the public sector was not ideally suited to handle all aspects of public and private life, at least in the democratic societies of the West and specifically in the United States. After World War II, sentiment began to shift towards decentralization. It was a gradual shift that first began in intellectual circles during the late 1940s and early 1950s. The United States had also become very

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<sup>22</sup> Jennifer Elsea and Nina Serafino, "Private Security Contractors in Iraq: Background, Legal Status, and Other Issues," *CRS Report for Congress* (Congressional Research Service, 21 June 2007), 27.

<sup>23</sup> Martin Van Creveld, *The Rise and Decline of the State* (New York: Cambridge University Press, 1999), 156, 189-262.

<sup>24</sup> *Ibid.*, 204.

<sup>25</sup> *Ibid.*, 258-262, 372.

centralized, though not to the degree of European nation-states. New bureaucracies were created, and a social system that placed control and responsibility for decisions on the state was expanded.<sup>26</sup>

In the post-war era from 1945 to 1975, the bureaucracy of the government in the United States continued to expand. It was not until the end of this period that the pendulum appeared to have begun its shift back towards the private sector.<sup>27</sup> Citizens began to realize that government bureaucracy was inherently inefficient and could not provide services as well as the private sector.<sup>28</sup> People were motivated primarily by their own self-interest and not by altruism. Only by aligning individual motivations with public (state) interests would better results be achieved. These intellectual arguments were reinforced by the economic arguments of Milton Friedman, who expounded on the virtues of free markets and limited government intervention in the economic life of the nation.<sup>29</sup> The nation-state and public sector control had reached the apex and began its long retreat from sectors of the economy that had formerly been controlled by the private sector.

Therefore, the rise and expansion of the PMI over the past 20 years has marked the decline of the state's monopoly on the use of force. This decline is the result of downsized government agencies and the privatization of those military functions once monopolized by the state. It could be strongly argued that PMCs that have risen up to fill a demand are only reclaiming a sector that was, until the turn of the century, largely in the private domain.

## **B. LEGAL PRECEDENT**

There is considerable legal precedent to support the private control of force and the existence of private military entities throughout history. It can be further argued that

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<sup>26</sup> Martin Van Creveld, *The Rise and Decline of the State* (New York: Cambridge University Press, 1999), 361-67.

<sup>27</sup> Ibid., 336-414.

<sup>28</sup> Ibid., 368-70.

<sup>29</sup> Milton Friedman, *Capitalism and Freedom* (Chicago: The University of Chicago Press, 1962), 2-4.

the private control of force, and hence the PMI in the modern era, is a natural phenomenon that results from the very nature of man himself. Opponents of the private control of military force frequently cite Thomas Hobbes and argue that the state should have a monopoly on force.<sup>30</sup> This school of thought further argues that it is immoral and unethical for private, non-state actors to control force or engage in military functions. From a historical and intellectual perspective, this is a direct contradiction of the principles upon which the United States was founded.

The founding fathers of the United States recognized that the state should not have a monopoly on force. With their recent experience in fighting the British crown, they fully believed that government, left to its own devices, would eventually become overbearing in its use of force, and would resort to force and violence to keep its citizenry in check. Therefore, they wrote checks and balances into the U.S. Constitution that limited the amount of force that the government could bring to bear on its citizens. The realization and subsequent codification of the idea that the government does not have a monopoly on force is found in the Bill of Rights, and specifically, the Second Amendment of the U.S. Constitution. It is well established in U.S. legal precedent that the government does not hold a monopoly on force and the management of violence.

Most importantly, Article I, Section 8 of the U.S. Constitution, grants the right of the PMI to exist. This section establishes and acknowledges that the PMI plays an important role in defense of this nation, so important that it should not be left solely to the government to execute. This section of the constitution also acknowledges that the government is not always going to be able to provide military services in a timely manner and the private sector can and will play an important role in the building of the nation.

The expansion of the United States in the nineteenth century is a history of private military actions undertaken on behalf and with the full support of the government. Both private naval and land forces were used in the defense of national interests. During the War of 1812, the U.S. government authorized privateers to prey on enemy shipping.<sup>31</sup> It

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<sup>30</sup> Thomas Hobbes, *Leviathan: or the Matter, Forme and Power of a Commonwealth Ecclesiasticall and Civil*. Edited by Michael Oakshott (Oxford: Basil Blackwell, 1960), 109-113.

<sup>31</sup> Theodore Roosevelt, *The Naval War of 1812* (New York: G.P. Putnam's Sons, 1882).

should not be assumed that the government has always controlled the use of force. Nor should it be assumed that the government is the best organization to manage the use of force. Most certainly, the government will always retain the authority to do so, but may not always possess the means or even the expertise to be able to do so in an efficient and effective manner.

### **C. POST COLD WAR EXPANSION**

This section will discuss the modern era and the expansion of the PMI beginning at the end of the Cold War and continuing to the present day. It will attempt to explain the re-emergence and exponential growth of the PMI in the 1990s in view of the structural and policy deficiencies that created the opportunities for these individuals and companies.

The expansion of the PMI in the modern era can be attributed to a number of factors and events. However, the most important of these was the downsizing of the large militaries that faced off against each other for nearly 45 years in the superpower showdown known as the Cold War. In the United States, downsizing the military, which began in 1990 and continued throughout the 1990s, was perceived as the rational course of action after the collapse of the former Soviet Union.<sup>32</sup>

While civilian global labor markets absorbed the majority of former soldiers, some decided to market their military skill sets in the areas of private security and global risk management. As members of the great capitalistic system, those early visionaries in the PMI foresaw an increasingly chaotic third world, with large numbers of failed or failing states, and seized an opportunity to capitalize on this turmoil by offering security services to governments and private corporations. As discussed in the next section, Executive Outcomes in South Africa provides an example of a PMC formed in response to the demand for privatized military forces. These individuals and corporations that seized this market were not encroaching upon domains that the government controlled

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<sup>32</sup> George Friedman, "The Geopolitical Foundations of Blackwater." *Outside the Box*, Vol. 4 – Special Edition, October 2007 [article online]; available from <http://www.fxstreet.com/futures/market-review/outside-the-box/2007-10-12.html>; Internet; accessed 20 November 2007.

exclusively. Rather, they were filling a need or requirement, a vacuum created by the retreat of the state from the security domain. According to Thomas Adams, the “successful track record of companies like Executive Outcomes” makes PMCs a “realistic option” for governments in need of additional military resources.<sup>33</sup>

After the collapse of the former Soviet Union, the U.S. military, specifically the Army, was restructured to meet the challenges of a changing strategic environment.<sup>34</sup> The order to restructure and transform the military was given by President George H. W. Bush in August 1990. President Bush called on the DoD to develop a defense strategy for the future that would adapt to the new global environment.<sup>35</sup> As stated by Paul Wolfowitz, Under Secretary of Defense for Policy,

A new defense strategy was mandated because of three key interlocking developments: (1) the transformation of the Soviet Union and Eastern Europe; (2) changes in the nature of regional conflicts; and (3) the evolution of increasingly capable American friends and allies. These developments are major successes for the United States, but they also present new challenges.<sup>36</sup>

In the period after the Gulf War in 1991, the shift in strategy was maintained throughout President Clinton’s terms in office, initially under the direction of then-Secretary of Defense Les Aspin. The military was downsized and restructured, becoming more agile to address smaller regional conflicts that were predicted to arise. The premise for this decision was that the large standing army of the Cold War period was not appropriate for the new global environment and was no longer required to face off against the Soviet Union.<sup>37</sup> The military downsized significantly, restructured, and adopted the new strategy for the future.

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<sup>33</sup> Thomas Adams, “The New Mercenaries and the Privatization of Conflict,” *Parameters* (Summer 1999): 103-16.

<sup>34</sup> George Friedman, “The Geopolitical Foundations of Blackwater,” *Outside the Box*, Vol. 4 – Special Edition, October 2007 [article online]; available from <http://www.fxstreet.com/futures/market-review/outside-the-box/2007-10-12.html>; Internet; accessed 20 November 2007.

<sup>35</sup> Graham Allison and Gregory Treverton, eds., *Rethinking America’s Security: Beyond Cold War to New World Order* (New York: Norton & Company, 1992), 176.

<sup>36</sup> *Ibid.*, 177.

<sup>37</sup> Friedman.

During the 1990s, the U.S. military continued the transformation process as a result of these actions and world events. From 1990 to 1998, the U.S. Army went from roughly 785,000 to less than 500,000 active duty soldiers.<sup>38</sup> Additionally, the Reserve and National Guard forces were realigned to fill surge requirements and force gaps in the active component.<sup>39</sup>

Policy makers must have thought that restructuring the military in this manner was the right thing to do given the new global environment and security posture. But, as time has proven, this restructure of the military in the 1990s, and recent foreign policy decisions to engage in multiple large scale operations, have stretched our military to its operational limits. The policy requirements exceed the resources and PMCs were contracted to fill the gaps.<sup>40</sup>

Unquestionably, restructuring and downsizing of the military in the mid 1990s set the conditions for growth in the PMI. By the late 1990s and early 2000s, foreign policy decisions had not only created the market for privatized military forces, but established the U.S. government's dependence on PMCs to support military operations.<sup>41</sup> PMCs were contracted in large numbers to support and fill gaps in the force structure. Policy decisions placed increasing demands on government agencies, which led to continued utilization and acceptance of PMCs as a critical component of the U.S. military.

Reliance by the government on PMCs and contractors fueled the expansion and growth of PMCs. The PMI has matured over the past two decades; expansion and operational successes have reinforced the viability of the PMC concept. As Singer states, "The Private military industry is now a reality. Its emergence raises possibilities and

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<sup>38</sup> Bart Brasher, *Implosion: Downsizing the U.S. Military, 1987-2015* (Westport: Greenwood Press, 2000), 213.

<sup>39</sup> George Friedman, "The Geopolitical Foundations of Blackwater." *Outside the Box*, Vol. 4 – Special Edition, October 2007 [article online]; available from <http://www.fxstreet.com/futures/market-review/outside-the-box/2007-10-12.html>; Internet; accessed 20 November 2007.

<sup>40</sup> Defense Science Board Task Force, *Deployment of Members of the National Guard and Reserve in the Global War on Terrorism*, September 2007 [report online]; available from <http://www.acq.osd.mil/dsb/reports.htm>; Internet; accessed 22 November 2007.

<sup>41</sup> David Isenberg, "A Fistful of Contractors: The Case for a Pragmatic Assessment of Private Military Companies in Iraq," *Research Report 2004.4* (British American Security Information Council, September 2004), 19-21.

dilemmas that are not only compelling and fascinating in a theoretical sense, but also driven by their real world relevance.”<sup>42</sup>

#### **D. EXECUTIVE OUTCOMES: USHERING IN THE MODERN ERA**

One of the major unintended consequences of the end of the Cold War in 1989 was the reduction in security assistance afforded to third world nations. These nations, without the benefits of being a proxy fighter sponsored by a superpower actor, began to fail at a rate that accelerated markedly in the mid-1990s. By 1995, many of these nations, mainly on the continent of Africa, faced armed conflict.<sup>43</sup> The security vacuum created by these failing states resulted in the emergence of several PMCs. The most prominent of these organizations was Executive Outcomes in South Africa.

The origin of the PMI in the modern era can be traced to the formation of the firm Executive Outcomes in 1989.<sup>44</sup> Executive Outcomes was formed by an ex-South African Defense Forces officer by the name of Eban Barlow and first rose to prominence during the Angolan Civil War in 1993. The Angolan government, led by MPLA president, Jose Eduardo dos Santos, was on the verge of defeat at the hands of UNITA rebels led by Jonas Savimbi.<sup>45</sup> It hired Executive Outcomes to turn the situation around.

Executive Outcomes, under a two month short term contract and utilizing a contracted military force fewer than 200 personnel, was able to quickly achieve success by recapturing Angolan oil facilities at Kefekwena and Soyo.<sup>46</sup> Dos Santos, after seeing the utility of using contracted private forces, offered Executive Outcomes a one year renewable contract to support the Angolan Army worth over \$40 million a year.<sup>47</sup>

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<sup>42</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 242.

<sup>43</sup> Monty Marshall, *Conflict Trends in Africa, 1946-2004*, Arlington: George Mason University, 14 October 2005 [report online]; available from <http://members.aol.com/cspgcm/AfricaConflictTrendsMGM2005us.pdf>; Internet; accessed 4 December 2007.

<sup>44</sup> James Davis, *Fortune's Warriors* (Vancouver: Douglas & McIntyre, 2002), 124.

<sup>45</sup> Ibid., 125.

<sup>46</sup> Ibid., 126.

<sup>47</sup> Ibid., 128.

During the course of this contract, Executive Outcomes trained the Angolan Army's 16<sup>th</sup> Brigade and inserted itself into the command structure.<sup>48</sup> They also provided advisors to the high command of the Angolan Army in order to instill a strategic direction and to help steer operations. As a result of these efforts, the reinvigorated Angolan Army was able to force Savimbi's UNITA rebels to the negotiating table through a series of stunning victories. In November of 1994, Savimbi agreed to sign the U.N.-brokered Lusaka Peace Accord.<sup>49</sup> By 1996, Executive Outcomes had earned roughly \$80 million from its contract and had been directly responsible for bringing peace to the war-torn country of Angola.<sup>50</sup>

Executive Outcomes earned a reputation for military professionalism from its two and a half years in Angola and was credited with bringing that country's bloody civil war to a close. The publicity that Executive Outcomes received did not seem to sit well with the international community, who viewed the company's mercenary-type activities with suspicion and mistrust. Perhaps jealousy would be the more appropriate term, as a U.N. peacekeeping force of thousands was a catastrophic failure and cost \$1 million a day to maintain.<sup>51</sup> Many viewed the company's success in Angola as a fluke, a lucky gambit that turned out to be successful but that was unlikely to be repeated. Events would prove otherwise, in April 1995, Executive Outcomes would sign a contract with Sierra Leone to provide military support and training to the Sierra Leonean Army.<sup>52</sup>

The Executive Outcomes experience in Sierra Leone would prove to be the highpoint of its success and an example of the utility to be found in contracting PMCs in the modern era. Similar to Angola, a force of less than 300 personnel was able to defeat a rebel force on behalf of a legitimate government. It was also able to rescue thousands of child soldiers from slavery as well as avert major atrocities and genocides from occurring. The Revolutionary United Front (RUF) was defeated on the battlefield and

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<sup>48</sup> James Davis, *Fortune's Warriors* (Vancouver: Douglas & McIntyre, 2002), 128.

<sup>49</sup> Ibid., 130.

<sup>50</sup> Ibid., 132.

<sup>51</sup> Ibid., 129.

<sup>52</sup> Ibid., 136.



quickly forced to the negotiating table. However, a condition of the peace agreement was that Executive Outcomes had to leave the country. Facing international pressure, the company withdrew in 1997 and left behind a country in which they had ended the war and brought free elections.<sup>53</sup> Unfortunately, just four months later, a coup destroyed the progress that had been made and Sierra Leone returned to a state of chaos.

Executive Outcomes is an early example of growth and success in the privatized military and international security domains; other PMCs would follow their lead in the decades to come. According to Peter Singer, this trend is part of the maturing of the PMI in the 1990s and is expected to continue into the foreseeable future.<sup>54</sup> It is important to note that these companies are rising to fill the security vacuum left by failed and failing states. If looked at from the perspective of a market, there is simply a rising demand and need for military services that were not being provided by traditional nation-states and other international bodies.

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<sup>53</sup> James Davis, *Fortune's Warriors* (Vancouver: Douglas & McIntyre, 2002), 144-45.

<sup>54</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 230-31.

### **III. CURRENT SNAPSHOT OF PRIVATE MILITARY COMPANIES**

Contractors are fast, reliable, skilled, efficient, and largely anonymous. It is no stretch to call the contractors of the United States a “shadow army.” They come from every branch of the military, government, business, industry, and academia. Although their employment is temporary, given the United States’ inclination to influence world events, it is unlikely that there will be any shortage of employment opportunities in the foreseeable future. – *Colonel Gerald Schumacher (ret.), 2006* <sup>55</sup>

#### **A. TYPOLOGY OF PRIVATE MILITARY COMPANIES**

There are several different frameworks that have been proposed in order to frame the PMI. Some have attempted to group these private military firms according to their level of activity and whether that activity can be classified as active or passive.<sup>56</sup> Others have looked at the industry from a political science perspective, attempting to group firms as primarily international or domestic. Yet others have attempted to measure offensive and defensive capabilities and have sought to group organizations according to this methodology.<sup>57</sup> However, the best typology, according to Peter Singer, appears to be the division of PMCs into three types of firms: military provider firms, military consultant firms, and military support firms.<sup>58</sup> Each of these firms is distinguished by the range of services that it provides and the level of force involved, if any.

##### **1. Military Provider Firms**

Military provider firms, such as Blackwater Security Consulting, are the most widely known and controversial. These firms provide security type services to U.S. government agencies and operate in combat zones alongside uniformed military forces.

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<sup>55</sup> Gerald Schumacher, *A Bloody Business: America’s War Zone Contractors and the Occupation of Iraq* (Saint Paul: Zenith Press, 2006), 15.

<sup>56</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 89.

<sup>57</sup> *Ibid.*, 90.

<sup>58</sup> *Ibid.*, 93.

Primarily, the firms provide security services to the DoD and DoS; typical tasks include diplomatic and convoy armed security. Provider firms capable of providing combat services are highly specialized and constitute a small portion of the private sector supporting U.S. military operations. Executive Outcomes in South Africa was one of the first PMCs to provide these types of services to legitimate governments.<sup>59</sup>

## **2. Military Support Firms**

Military support firms like Halliburton or Kellogg, Brown, and Root are the largest of the private firms that Singer outlines. Support firms provide an extensive list of logistical support services that basically keep U.S. military operations running. These firms provide non-lethal services to the U.S. government and military that range from operating dining facilities to driving convoys that keep the military supplied with critical material.<sup>60</sup>

## **3. Military Consultant Firms**

Military consultant firms are the smallest of the group that Singer outlines. Consultant firms are highly technical and their services are more focused on providing military and technical support functions. They are contracted to provide technical support on weapon, vehicle, and aircraft systems. Their functions range from maintenance and training to technical support on the battlefield.<sup>61</sup>

## **B. TRENDS IN CONTRACTING**

Current trends in contracting PMCs by the U.S. government, in support of military operations, can best be identified through an analysis of the number of contractors employed under current PMC contracts, specifically in Iraq. The actual numbers of personnel, contracted by the U.S. government in Iraq at the present time, are

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<sup>59</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 92.

<sup>60</sup> Ibid., 97.

<sup>61</sup> Ibid., 95.

unknown due to ambiguity in the PMI, but according to a DoD census in 2007, the total number of contractors operating in Iraq is now more than 180,000.<sup>62</sup> This number is purely an estimate (due to the cloud of secrecy that surrounds PMCs and the transparency issues that preclude the ability for open sources to obtain actual numbers) and roughly includes “21,000 Americans, 43,000 foreign contractors, and over 100,000 Iraqi civilians.”<sup>63</sup> As of November 2007, the total number of contractors – all employed by U.S. tax dollars – operating in Iraq now appear to equal or exceed the numbers of actual U.S. military forces.<sup>64</sup> These numbers clearly illustrate the degree to which PMCs are supporting U.S. military operations and how the U.S. government is relying on them to fill gaps in the force.

Of the total number operating in Iraq, armed contractors such as Blackwater, constitute less than 30 percent of the 180,000 total contractors with just over 48,000 serving in this capacity.<sup>65</sup> Once again, the mix of American, foreign, and Iraqi also factors into this figure with an approximation of about 17 percent being American.<sup>66</sup> Of the estimated 181 firms providing armed security services, not all are owned and based in the United States; Blackwater is the exception.<sup>67</sup>

### **C. LEGAL FRAMEWORK FOR CONTRACTORS**

The legal framework for contractors has not adapted as quickly as the PMI has expanded. PMCs operating in support of U.S. military operations are not above the law, but international and U.S. military and public law have not been properly applied because

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<sup>62</sup> Number of contractors in Iraq were obtained from two sources: Peter Singer, “Counterproductive: Private Military Contractors Harm the Counterinsurgency effort in Iraq,” *Armed Forces Journal* (November 2007): 36-39.; and Christian Miller, “Contractors outnumber soldiers in Iraq,” *Los Angeles Times*, 4 July 2007 [newspaper online]; available from <http://www.latimes.com/news/nationworld/world/la-na-private4jul04,0,5419234,full.story?coll=la-home-center>; Internet; accessed 15 August 2007.

<sup>63</sup> Miller.

<sup>64</sup> Singer, 37.

<sup>65</sup> Ibid., 37.

<sup>66</sup> Jennifer Elsea and Nina Serafino, “Private Security Contractors in Iraq: Background, Legal Status, and Other Issues,” *CRS Report for Congress* (Congressional Research Service, 21 June 2007), 3.

<sup>67</sup> Singer, 37.

PMCs fall into a grey area within the law.<sup>68</sup> Proper regulation for PMCs does not exist, nor has their position in military affairs truly been defined.<sup>69</sup> International law falls short by relying on outdated definitions (reference Legitimacy section of Chapter V). In turn, the international community relies on the U.S. government to regulate the activities of its contracted PMCs since these firms are functioning on behalf of the United States.<sup>70</sup>

PMCs in Iraq are currently operating under an immunity umbrella that is provided by the U.S. government and Coalition Provisional Authority (CPA) Order 17. Under this CPA order, all contractors employed by the U.S. government are immune from Iraqi law, but expected to respect the law. It also states that contractors are subject to the laws of their “sending states.”<sup>71</sup> The CPA order does present some legal challenges since not all PMCs and contractors working for the U.S. government are from the United States.

Under the 2007 Defense Authorization Act, U.S. military law (UCMJ) resides over contractors, however the implementation of this act by the DoD remains questionable.<sup>72</sup> Until the U.S. government addresses these issues, the legal framework for PMCs operating in U.S. military operations will remain ambiguous. A resolution to this legal ambiguity appears to be forthcoming. As referenced in the Blackwater case study, an incident on September 16, 2007, where Blackwater employees are accused of shooting Iraqi civilians, is under investigation by the U.S. Federal Bureau of Investigation (F.B.I.) and will force this legal issue to the forefront.

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<sup>68</sup> Jennifer Elsea and Nina Serafino, “Private Security Contractors in Iraq: Background, Legal Status, and Other Issues,” *CRS Report for Congress* (Congressional Research Service, 21 June 2007), 11.

<sup>69</sup> Nicholas Matziorinis and Paolo Nalin, *Private Military Companies: Legitimacy and Accountability* (Montreal: McGill Management, 20 April 2004), 11-12, 25-26.

<sup>70</sup> A combination of four sources outlined the international legal framework for contractors: Elsea and Serafino, 10-19.; Richard Lardner, “Who Watches US Security Firms in Iraq?” *Guardian Unlimited – UK*, 19 September 2007 [newspaper online]; available from <http://guardian.co.uk/worldlatest/story/0,-6932859,00.html>; Internet; accessed 24 September 2007.; David Isenberg, “A Fistful of Contractors: The Case for a Pragmatic Assessment of Private Military Companies in Iraq,” *Research Report 2004.4* (British American Security Information Council, September 2004), 40-49; and Matziorinis and Nalin, 17-20.

<sup>71</sup> Isenberg, 45.

<sup>72</sup> Marc Lindemann, “Civilian Contractors under Military Law,” *Parameters* (Autumn 2007): 83-94.

## IV. BLACKWATER CASE STUDY

For Blackwater, the opportunity of a lifetime would come when U.S. forces rolled into Baghdad in March 2003. – *Jeremy Scahill, 2007* <sup>73</sup>

Blackwater Security Group is the name that is today synonymous with the modern PMC. The publicity that this company has received as a result of its security contracts in Iraq and Afghanistan has overshadowed that of any other company. In effect, Blackwater has become the poster child of the industry in the minds of both supporters and critics and has come to symbolize, depending on which side of the debate a person falls, what is being done right and what is being done wrong in the expanding realm of private security contracting.

What is the background of Blackwater? How did it get its start? And how did Blackwater gain such notoriety in recent years, growing from a small corporation with revenues of less than \$1 million a year to become the highest profile private armed security provider in the United States? This case study will attempt to answer those questions and to provide a glimpse of the corporation that has come to symbolize the PMI in the United States. It can truly be said that as goes Blackwater, so will go the industry.

### A. THE EARLY DAYS OF BLACKWATER

Blackwater USA was incorporated in 1997 by Erik Prince and Al Clark. The company was initially envisioned as a “private shooting range and training facility for military and law-enforcement personnel.”<sup>74</sup> In order to make that vision a reality, Prince purchased 6000 acres of land near the Great Dismal Swamp, in Moyock, North Carolina and began construction of what would ultimately become Blackwater USA’s headquarters and training facility.<sup>75</sup>

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<sup>73</sup> Jeremy Scahill, *Blackwater: The Rise of the World’s Most Powerful Mercenary Army* (New York: Nation Books, 2007), 47.

<sup>74</sup> Jordan Heller and Paul Tullis, “Inside Blackwater,” *Men’s Journal*, December 2007, 215.

<sup>75</sup> Ibid.

The first several years were spent building the company from the ground up. According to Jeremy Scahill, author of the book *Blackwater*, ground was broken on the Blackwater compound in June 1997, and in May of 1998, the company was officially opened for business.<sup>76</sup> Close proximity to several large military installations was a key factor in the decision to build the facility in Northern North Carolina. Blackwater's compound is easily accessible to U.S. Army soldiers at Fort Bragg and the Marines at Camp Lejeune in North Carolina and the Norfolk Naval Station in Virginia.

The market for Blackwater USA's marksmanship training program was initially active duty military personnel, federal employees from other civilian agencies, and local law enforcement. Blackwater's services ranged from expert weapons training to leasing range facilities and hosting training seminars and conventions. By late 1998, Blackwater boasted a nine-thousand-square-foot lodge with conference rooms, classrooms, lounge, pro shop, and dining hall.<sup>77</sup> Blackwater's early marketing was mainly through word of mouth referrals from within the military and law enforcement communities. As word spread of its modern training facilities and user-friendly atmosphere, business increased markedly. However, it wasn't until February 1, 2000 that business really took off. That is the date that the company won a Government Services Administration (GSA) contract.<sup>78</sup>

Placement on the GSA service schedule opened Blackwater USA's range of training services to the entire government marketplace. Being a GSA-approved vendor is significant not because it guarantees contracts, but because it exposes a company to potential customers. The GSA schedule is, in effect, the business yellow pages for the U.S. government. Similar companies offer their services on approved schedules and government purchasers choose the one that best suits their mission and budget requirements. Hence, this approval was really an additional marketing venue for

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<sup>76</sup> Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (New York: Nation Books, 2007), 33.

<sup>77</sup> Ibid., 35.

<sup>78</sup> Ibid., 37.

Blackwater. While business increased drastically, revenues were still under \$1 million for the company. The critical event that would forever alter the fortunes of the company was the attacks of September 11, 2001.

## **B. GLOBAL WAR ON TERROR: CATALYST FOR GROWTH**

The attacks on September 11, 2001 drastically improved the fortunes of Blackwater's small military training operation and set the stage for dramatic growth in not only the company's operations and revenues, but also in its reputation as the leader in its industry. These attacks, preceded by the attack on the U.S.S. Cole in October of 2000, marked a realization by the U.S. Navy that it needed to increasingly concentrate on force protection. As a result, Blackwater USA was awarded a contract by the U.S. Navy worth \$35.7 million in early 2002 to train 30,000 sailors in force protection techniques.<sup>79</sup> This contract catapulted Blackwater into the spotlight as one of the leaders in military training provided by private contractors.

It was in this context that Blackwater Security Consulting (BSC) was formed on January 22, 2002.<sup>80</sup> This subsidiary would, in a short period of time, raise the profile of its parent company, Blackwater USA, to new heights and propel it for the first time into the spotlight as the world's leading PMC and security provider. BSC would make its mark by providing force protection services to government agencies and installations worldwide and Personal Security Detachments (PSDs) to military and diplomatic missions. Its first security contract was awarded in April 2002 by the CIA to provide twenty security guards to protect the CIA's station in Kabul.<sup>81</sup> With the award of this security contract to BSC, Blackwater USA had officially arrived and was now playing in the big leagues with the likes of companies such as MPRI, DynCorp, and others.

By early 2003, the company was uniquely poised to win even more security contracts. They did not have to wait long for the opportunity; the catalyst for growth was

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<sup>79</sup> Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (New York: Nation Books, 2007), 41.

<sup>80</sup> Ibid., 43.

<sup>81</sup> Ibid., 45.



the U.S. invasion, and subsequent occupation of Iraq in March 2003. By this time, the company had established its reputation as a professional provider of force protection and security services through successful performance on its previous contracts. In August of 2003, it secured its highest profile contract yet, the personal security detail of Ambassador L. Paul Bremer in post-invasion Iraq.<sup>82</sup> In just 28 days, Blackwater was able to put together a security detail of 64 men, armored cars, and helicopters to provide 24 hour protection to the man who had become the ultimate symbol of the U.S. occupation in Iraq.<sup>83</sup> This security contract, and their performance, would seal Blackwater's reputation as one of the most elite PMCs. Blackwater was becoming the trendsetter in the modern PMI.

Blackwater's growth continued to accelerate from late 2003 to June 2004, when it was awarded the DoS Worldwide Personal Protective Services contract.<sup>84</sup> This contract resulted in a massive increase in the number of personnel working for the company as independent contractors at numerous worldwide locations, and performing numerous security missions. By the end of 2004, revenues had experienced a growth of over 600 percent, and by 2007, there were over 1800 personnel working for Blackwater.<sup>85</sup> At present, Blackwater USA and its subsidiaries have won more than \$1 billion in federal contracts.<sup>86</sup> So, one might ask, how does the company do it? How has it organized for success? The following section will attempt to answer those questions and shed some light on the present organization known as Blackwater USA.

### **C. BLACKWATER'S ORDER OF BATTLE**

The functional organization of Blackwater USA is similar to that of many western militaries. Blackwater USA is the holding company of nine subsidiary companies, each organized along functional lines based upon the tasks performed. These functional areas

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<sup>82</sup> Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (New York: Nation Books, 2007), 47.

<sup>83</sup> Jordan Heller and Paul Tullis, "Inside Blackwater," *Men's Journal*, December 2007, 216.

<sup>84</sup> *Ibid.*, 217.

<sup>85</sup> *Ibid.*, 216.

<sup>86</sup> *Ibid.*, 216.

range from aviation and training to intelligence and logistics and are similar to the command and staff functions seen in typical western militaries. These companies include Greystone, Ltd., Raven Construction, Aviation Worldwide, and Blackwater Security Consulting. Blackwater USA is itself a subsidiary of The Prince Group, Erik Prince.<sup>87</sup>

The composition of personnel that make up Blackwater's independent contractor base are mostly U.S. citizens, but also consist of special forces professionals from the other militaries of the world. This has caused discontent in the world community who views this aspect of the PMI dangerously close to mercenary-type activities. Blackwater's personnel base is readily expansible as the company maintains a database of some 40,000 personnel on call, and available for duty, on relatively short notice.<sup>88</sup>

The equipment that Blackwater uses includes some of the most sophisticated technologies in the world. In addition to modern small arms and ammunition, Blackwater has a wide range of armored and unarmored platforms on which to conduct missions. They have both strategic and tactical aviation assets, and depending on the mission, can provide fixed wing or rotary wing aircraft. The company continues to expand its equipment offerings and is now fielding its own armored vehicle known as the Grizzly. Additionally, it is developing a blimp-like aerial observation platform for use in intelligence, surveillance, and reconnaissance missions.<sup>89</sup> There is no doubt, by looking at the arsenal that the company owns as well as its database of personnel, that Blackwater USA is ready and capable to fill all of the U.S. government's private security needs. To reinforce the capabilities of the company, a Blackwater executive stated that it has the capability to field a brigade-sized military force.<sup>90</sup>

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<sup>87</sup> Blackwater USA. Web site online. Available from [www.blackwaterusa.com](http://www.blackwaterusa.com); Internet; 4 December 2007.

<sup>88</sup> August Cole, "Blackwater Lays Out Broader Growth Plans," *Wall Street Journal*, 15 October 2007, Volume CCL, Number 89, national edition, sec. A3.

<sup>89</sup> Ibid.

<sup>90</sup> World Tribune, "U.S. firm offers private armies for low-intensity conflicts," *World Tribune.com*, 29 March 2006 [article online]; available from [http://www.worldtribune.com/worldtribune/WTARC/2006/ss\\_terror\\_03\\_29.html](http://www.worldtribune.com/worldtribune/WTARC/2006/ss_terror_03_29.html); Internet; accessed 4 December 2007.

#### **D. PUBLICITY AND CONTROVERSY SURROUNDING BLACKWATER**

Blackwater USA continued to expand and grow through late 2003 and early 2004 by conducting a marketing campaign that capitalized on its reputation as the premiere private security provider in Iraq and Afghanistan. This savvy public relations campaign sent a message to government decision makers that Blackwater was the premiere private security solution and had a reputation backed up with results, while simultaneously keeping a low profile in the international press. Blackwater would not be widely known to the public and world opinion until the events of March 31, 2004. On that date, a Blackwater security convoy of four contractors was brutally murdered in Fallujah.<sup>91</sup> Their bodies were mutilated and hung from a bridge, provoking an all out siege on the city of Fallujah by the U.S. military. Several days later, Blackwater contractors were again in the news in Najaf as they helped to repel an assault by militia forces commanded by Muqtada al Sadr.<sup>92</sup> These events would bring the company to the forefront of the public policy debate on Iraq.

Over the course of the Iraq War, Blackwater has remained in the media spotlight. The most recent incident involving Blackwater contractors took place on September 16, 2007 in Iraq. Blackwater contractors are accused of killing 17 Iraqi civilians as their Blackwater convoy vacated a hostile square in Baghdad.<sup>93</sup> The contractors insist that they were fired upon first, and were merely defending themselves. In the weeks to follow, the incident generated even greater political tension, leading to the Iraqi government calling for expulsion of Blackwater from Iraq and the repeal of CPA Order

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<sup>91</sup> Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (New York: Nation Books, 2007), 91-104.

<sup>92</sup> Ibid., 117-144.

<sup>93</sup> Three sources were used: MSNBC, "Iraqi authorities want Blackwater out," *MSNBC News Service*, 9 October 2007 [news article online]; available from <http://www.msnbc.msn.com/id/21197877>; Internet; accessed 9 October 2007; Associated Press, "Private guards face Iraq inquiry," *Associated Press*, 17 September 2007 [news article online]; available from <http://www.msnbc.msn.com/id/20819065/>; Internet; accessed 17 September 2007; and Ned Parker, "Blackwater Case in Iraq puts U.S. Officials in Vise," *Chicago Tribune*, 18 September 2007 [newspaper online]; available from [http://chicagotribune.com/services/newspaper/printedition/tuesday/chi-iraq\\_18sep18,0,413119.story?coll=chi-business-hed](http://chicagotribune.com/services/newspaper/printedition/tuesday/chi-iraq_18sep18,0,413119.story?coll=chi-business-hed); Internet; accessed 24 September 2007.

17.<sup>94</sup> As referenced in Chapter III, this CPA order provides PMCs immunity from Iraqi law. The culpability and result of these actions are not yet determined, but the F.B.I. has sent agents, at the request of the DoS, to investigate the incident in Iraq.<sup>95</sup> Blackwater has resumed operations with an increase in DoS oversight until the findings by the F.B.I. are officially released.<sup>96</sup> These events, at least from a public relations standpoint, brought Blackwater to the forefront of the PMI and have increased the debate over the use of armed contractors.

## **E. CONCLUSION**

The PMI, as represented in this case study of Blackwater, is experiencing phenomenal growth and an increase in controversy as a result of the high profile incidents that have placed the company in the media spotlight. Blackwater, the current trendsetter of the PMI, is a microcosm of the industry itself and represents the good, the bad, and the future of PMCs and armed contractors. As the current public policy debate rages on, one thing is for certain: the first order of society is to be secure. People will seek out security and protection from the means that are available. If the public sector is not up to the task, the private sector will step up to provide the services.

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<sup>94</sup> Two sources were used: MSNBC, "Iraqi authorities want Blackwater out," *MSNBC News Service*, 9 October 2007 [news article online]; available from <http://www.msnbc.msn.com/id/21197877>; Internet; accessed 9 October 2007.; and Associated Press, "Iraq Lifts Security Firm's License After Shooting Kills Civilians," *Associated Press*, 17 September 2007 [news article online]; available from <http://www.foxnews.com/story/0,3566,297022,00.html>; Internet; accessed 18 September 2007.

<sup>95</sup> Two sources were used: David Johnston and John Broder, "F.B.I. Says Guards Killed 14 Iraqis Without Cause," *The New York Times*, 14 November 2007, national edition, sec. A1; and David Scott, "Blackwater Chief: FBI Probe Welcome," *Associated Press*, 13 October 2007 [news article online]; available from [http://www.philly.com/philly/wires/ap/news/nation/20071013\\_ap\\_blackwaterchieffbirobewelcome.html](http://www.philly.com/philly/wires/ap/news/nation/20071013_ap_blackwaterchieffbirobewelcome.html); Internet; 15 October 2007.

<sup>96</sup> Two sources were used: Associated Press, "U.S. Resumes Blackwater Convoys in Iraq," *Associated Press*, 21 September 2007 [news article online]; available from <http://www.foxnews.com/story/0,3566,297588,00.html>; Internet; accessed 25 September 2007.; and Matthew Lee, "Rice Orders Blackwater Oversight," *The Herald*, 6 October 2007, Monterey edition, sec. A1.

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## V. CRITICAL ISSUES OF THE PRIVATE MILITARY INDUSTRY

PMCs and their conduct are now out in the open, officially above the horizon of public awareness, although concerns about transparency, openness and regulatory oversight remain. – *David Isenberg, 2004*<sup>97</sup>

This chapter explores the critical issues that influence the decision by policy makers to utilize PMCs and armed contractors in support of U.S. military operations. The critical issues outlined in this chapter address a combination of government, military, and public concerns with the PMI. Some of these are the issues that the government will need to overcome before expanding the authority of PMCs, and others directly influence the extent to which the U.S. government can consider privatization as a viable option. Moreover, these are the very same issues that will have an impact on the expanded use of armed contractors in combat operations. Based on the trends outlined in the initial chapter (expansion of the PMI and reliance by the U.S. government on PMCs), it is foreseeable that roles of PMCs may expand to include armed contractors in support of U.S. sanctioned irregular warfare operations and low intensity conflicts. This discussion of the issues will facilitate a better understanding of the implications and benefits of PMCs and assist in determining to what extent the U.S. government and the public are willing to accept armed contractors in U.S. military operations.

The U.S. government has adopted PMCs as part of their total military force structure, and it does not appear that the current policy is going to allow them to deviate from this trend anytime soon. If this trend, as outlined in previous chapters, is accepted as fact, then it is imperative that the public gains a better understanding of the PMI and its role in U.S. military operations. Ultimately, the public's grasp of these matters directly impacts the policy maker's decision in regard to the use and potential expanded use of PMCs and armed contractors by the U.S. government. The public needs to have an

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<sup>97</sup> David Isenberg, "A Fistful of Contractors: The Case for a Pragmatic Assessment of Private Military Companies in Iraq," *Research Report 2004.4* (British American Security Information Council, September 2004), 7.

understanding of how the military operates and why it has relied on PMCs to support military operations. This understanding may or may not influence an opinion on this controversial issue of armed contractors, but it will shed light on the critical issues involved with utilizing PMCs in U.S. military operations.

#### **A. PUBLIC PERCEPTION**

Public perception is largely based on people's opinion of whether or not an act or action is consistent with shared values, attitudes, and beliefs of society. This determination also influences societies' acceptable moral and ethical boundaries. So in the case of PMCs supporting U.S. military operations, such as Blackwater, public perception of PMCs is determined by the public's collective opinion on the degree to which the contractors' actions are consistent with shared values of society. These shared values are framed by the moral and ethical boundaries of society.

It can be ascertained that public perception is strongly linked to legitimacy in the eyes of the public. As in Figure 1, a simple model can illustrate the relationship between legitimacy and public perception. Legitimacy and favorable public perception move along the same axis; as legitimacy increases, so does public perception.

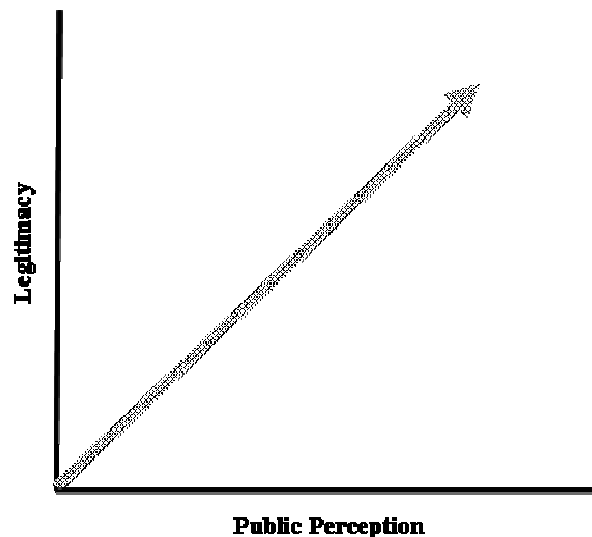


Figure 1. Legitimacy / Perception Diagram

As with any government policy issue, PMCs are subject to the effects of public perception. Perception can be used as an indicator to determine the degree of public support on a given issue and the extent to which the government will be able to pursue or abandon a particular policy decision. Currently, the best that can be determined is that the PMI issue remains divided. The extensive media coverage of the recent Blackwater debacle in Iraq, on September 16, 2007, is just the most recent incident involving a PMC. However, a decrease in public support for PMCs has been noted in media sources over the past year or so. It is hard to determine whether this trend will continue or whether it represents a transitory phenomenon. Critical incidents can sharply change public opinion. For example, the opinion polls taken shortly after September 11, 2001 “found that only 11 percent of Americans opposed the idea of contracting private soldiers to hunt down terrorist leaders.”<sup>98</sup>

Undoubtedly, public perception can be shaped by the various media sources and the public understanding of the issues at hand. As the media continually highlights the negative aspects of PMCs and portrays contractors, such as Blackwater, in a bad light, a growing cloud of negativity is likely to form, further diminishing public support for the PMI. Supporters of the PMI continue to highlight the “positive functions that they [contractors] have performed,” but there are just as many critics that who are surfacing the industries’ shortcomings.<sup>99</sup> PMCs must do a better job of opening up to the media and putting out their own story; silence on this issue will only lead to a decrease in public support.

## **B. ESTABLISHING LEGITIMACY**

This section explores the factors that influence the legitimacy of the PMI and its link to public perception and opinion. Public perception is a good indicator of

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<sup>98</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 232.

<sup>99</sup> *Ibid.*, 216.



legitimacy, but legitimacy does not rest entirely on the shoulders of public perception. Legitimacy of the PMI can change with reform of the industry and some of these reforms are currently underway.

From research and study on the PMI, Professor Nicholas Matziorinis from McGill Management in Montreal, Canada has set forth a framework to describe how the PMI has historically established legitimacy. In his work, Matziorinis outlines the following four areas that have allowed PMCs to established legitimacy on both the state and international level.<sup>100</sup>

- International Convention and Legislation
- Relevant U.S. Military Doctrine
- Industry References
- Scope of International Legitimacy

This framework also could be applicable for PMCs in the United States.

### **1. International Convention and Legislation**

Professor Matziorinis identifies that there is a lack of international legislation prohibiting the use of PMCs. International conventions and legislation define and discuss the use of mercenaries, but fail to address PMCs. Specifically, the 1977 Additional Protocol 1 to Article 47 of the Geneva Conventions of 12 August 1949 and the UN International Convention against the Use, Financing, and Training of Mercenaries (4 Dec 1989) merely define the legal status of mercenaries within the context of international and humanitarian law.<sup>101</sup> The international legislation is outdated and does not reflect the current use of PMCs by legitimate states. As stated by Matziorinis, “The documents [referencing the previously identified documents] do not address the evolution of PMCs

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<sup>100</sup> Nicholas Matziorinis and Paolo Nalin, *Private Military Companies: Legitimacy and Accountability* (Montreal: McGill Management, 20 April 2004), 11-15.

<sup>101</sup> Ibid., 11.

and their application within modern conflict.”<sup>102</sup> Beyond these documents, no recent international legislation exists or attempts to address the use and legal status of armed contractors.

Professor Matziorinis identifies two reasons or issues for the lack of international legislation for PMCs; the first is the “extremely rapid evolution and growth of the PMI since the end of the Cold War,” and the second is the “indication that the international community is currently devoid of a serious commitment to regulate the expansion of military power beyond the application by nation-states’ armed forces.”<sup>103</sup> Furthermore, and as defined in the initial chapter of this thesis, PMCs and mercenaries are not the same; the definitions typically referenced are not reflective of the current trends in military affairs. PMCs see themselves as permanent structures that share the goals of the nation and will be around after the conflict, whereas the mercenary has no stake in the outcome of the conflict.<sup>104</sup>

## **2. Relevant U.S. Military Doctrine**

PMCs or contractors – closest operational term in U.S. military doctrine since the term PMC is not recognized – operate under U.S. military doctrine as outlined in U.S. Army Regulation 715-9: *Contractors Accompanying the Force*. This regulation does provide the doctrinal basis for contractors operating with the military, but does not begin to address the issue to the degree required to properly address the size and scope of PMCs in U.S. military operations.

U.S. Army doctrine distinguishes contractors from combatants by the roles that they perform. The regulation states that contractors can potentially perform any function on the battlefield except inherently governmental functions.<sup>105</sup> Any involvement in these inherently governmental functions will negate their non-combatant status.

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<sup>102</sup> Nicholas Matziorinis and Paolo Nalin, *Private Military Companies: Legitimacy and Accountability* (Montreal: McGill Management, 20 April 2004), 11-15

<sup>103</sup> Ibid., 12-13.

<sup>104</sup> Fred Rosen, *Contract Warriors* (New York: Penguin Group, 2005), 11.

<sup>105</sup> Army Regulation 715-9, *Contractors Accompanying the Force*, (Washington DC: Department of the Army, 29 October 1999), 21.

As applied to this work, the identification of relevant doctrine and acceptance of contractors by the DoD and DoS, does legitimize the concept of PMCs from the U.S. military's perspective. However, legitimization based on doctrine cannot be extended beyond the limits previously established since this doctrine does not apply to contractors operating beyond their current roles. Additionally, the doctrine does not reflect the current scope of armed contractors or increased reliance on PMCs by the U.S. government. It is also important to note that historically, the discussion of combatant and non-combatant status of armed contractors is only relevant to those legitimate states that recognize this distinction on the battlefield.

### **3. Industry References**

As in the corporate world, the PMC is self-legitimized through accepted business practices and industry references. In many ways, PMCs rely on their reputation and the image of the entire PMI as a source to legitimize their operations. Professor Matziorinis identifies that PMCs throughout the industry have self-legitimized their operations by adherence to the following accepted business practices:<sup>106</sup>

- PMCs are structured as privately owned and independent businesses
- PMCs are nationally registered and incorporated businesses
- The board of directors of PMCs is most commonly constituted from former serving senior armed forces leadership, specifically retired general rank appointments.
- Broad parameters of contractual support and capability are detailed
- A selected Corporate Overview is presented within a public domain that infers a form of universal scrutiny.

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<sup>106</sup> Nicholas Matziorinis and Paolo Nalin, *Private Military Companies: Legitimacy and Accountability* (Montreal: McGill Management, 20 April 2004), 14.

#### **4. Scope of International Legitimacy**

International legitimacy is extended to the PMI based on the fact that they are contracted by and their work supports a legitimate state's foreign policy. This relationship is at the foundation of international acceptance and legitimacy of PMCs supporting U.S. government agencies abroad. Furthermore, the actions of PMCs are under strict and continuous criticism from the international community. Presently, "only the U.K. and U.S. national governments have reinforced this de-facto legitimacy by discrete but official sanctioning of their international contracts and operations."<sup>107</sup> PMCs gain international legitimacy by operating under the umbrella of U.S. military operations.

#### **C. ADHERENCE TO VALUES AND NORMS**

As the concept of PMCs gains legitimacy, a determination must be made on whether utilization of PMCs and armed contractors in expanded roles is consistent with the values and social norms of society. A soldier, contractor, and mercenary share some commonalities, but distinct differences also exist among them, specifically in terms of influencing forces such as monetary incentives, adherence to the values of society, and loyalty to the nation. Each of these elements is closely tied to one's motivation to serve or work.

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<sup>107</sup> Nicholas Matziorinis and Paolo Nalin, *Private Military Companies: Legitimacy and Accountability* (Montreal: McGill Management, 20 April 2004), 26.

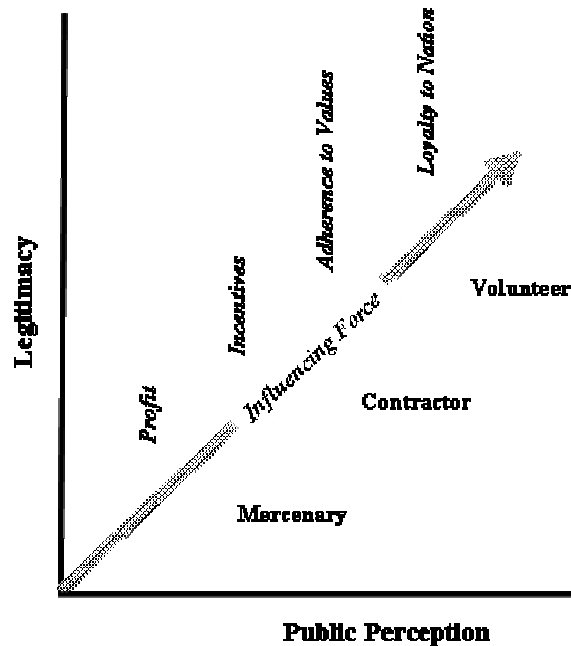


Figure 2. Combined Legitimacy / Perception Diagram

Figure 2 (hypotheses) illustrates the degree to which the influencing force shapes the three roles. Although the exact location is difficult to determine, it is plausible to argue that a volunteer soldier leans more towards loyalty, and a mercenary more towards profit. Contractors are likely to fall somewhere in between them on the influencing dimension. Although further studies would need to be done to support this conjecture, it suggests that a soldier, contractor, and mercenary could be differentiated in terms of the motivating factors that influence individuals in these three different roles.

One can argue, for example, that a soldier is driven by his loyalty to his nation; his actions are guided by his adherence to learned values and social norms. In most cases, the values that guide actions are in line with the values of the nation. The public's trust in the U.S. military is suggestive of this relationship. According to a Harris Poll in 2006, the U.S. military ranks as one of most-trusted institutions in the U.S. government.<sup>108</sup> The public's trust in the military "stems from the perceived integrity and values of the soldiers within it and the spirit of selfless service embodied in their duty on

behalf of the country.”<sup>109</sup> As Samuel Huntington wrote, “The military professional’s relation to society is guided by an awareness that his skill can only be utilized for purposes approved by society through its political agent, the state.”<sup>110</sup>

At the other end of the spectrum, a mercenary, per se, is likely to be influenced by profits and salaries with minimal attachment to the conflict, and even less to the values or loyalty of the states involved, positions inconsistent with PMCs and those government forces directly supporting the legitimate military operations of their nation. Contractors, on the other hand, are likely to fall in the middle between the incentive of high salaries and loyalty to the nation. Even though contractors are getting paid more for their service, a high degree of servitude to one’s nation exists. As stated by Erik Prince, founder, owner, and CEO of Blackwater USA, “I am an American working for America.”<sup>111</sup>

#### **D. PRINCIPAL – AGENT CONFLICTS**

The U.S. government has created a logical and lucrative business environment for PMCs; however, there is a conflict of interest in outsourcing inherently governmental functions. Scholars argue that PMCs are motivated by profit, not national interest or advancement of U.S. policy.<sup>112</sup> As profit-driven actors, they are expected to “make operational decisions that are influenced by their bottom lines.”<sup>113</sup> Thus, the utilization of PMCs by the U.S. government, security and national affairs are less likely to be “about collective good, but more about private means and ends.”<sup>114</sup> The profit motive appears

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<sup>108</sup> Jim Garamone, “U.S. Military Still the Most Trusted Institution,” *American Forces Press Service*, 8 March 2006 [article online]; available from [http://usmilitary.about.com/od/therorderlyroom/a/06harris\\_poll.htm?p=1](http://usmilitary.about.com/od/therorderlyroom/a/06harris_poll.htm?p=1); Internet; accessed 4 December 2007.

<sup>109</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 204.

<sup>110</sup> Ibid.

<sup>111</sup> CBS News, 60 Minutes, “Blackwater Chief Welcomes Extra Oversight,” *CBS News*, 14 October 2007 [text online from televised program]; available from <http://www.cbsnews.com/stories/2007/10/13/60minutes/main3364195.shtml>; Internet; accessed 21 November 2007.

<sup>112</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 218.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid., 226.

to be in direct opposition to the traditional values of the nation. Like most other contracts in the private sector, private military contracts consist of one person paying for the service and one doing the job. With this relationship, it is assumed that the interests of the U.S. government and PMCs “will never exactly coincide so there will always be an element of divided loyalties and goals.”<sup>115</sup>

This inconsistency in goals between the public and private sectors can best be described using agency theory.<sup>116</sup> This theory addresses the fundamental problems in principal-agent relationships, such as the relationship between the U.S. government (principal) and PMCs (agent). The principal-agent relationship with PMCs causes unique challenges for the U.S. government. Problems arise when the “goals of the principal and agent conflict” and when it is “difficult for the principal to verify what the agent is actually doing.”<sup>117</sup> These problems can be reduced by using appropriate contracting methods and increasing the amount of oversight on the actions of the agent.<sup>118</sup>

In agency theory, the principal focuses on determining whether a behavior-based contract or an outcome-based contract for the agent is most appropriate to reduce the inconsistencies and conflicts that exist in a principal-agent relationship.<sup>119</sup> The purpose of the contract is to ensure the agent is operating within the boundaries established by the principal. The most appropriate and effective type of contract arrangement realigns the goals of the agent with the principal’s goals. For example, in a situation when outcomes are easily measured, an outcome-based contract is more appropriate, but as the outcomes

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<sup>115</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 151.

<sup>116</sup> Kathleen Eisenhardt, “Agency Theory: An Assessment and Review,” *The Academy of Management Review*, vol. 14, no. 1, January 1989 [article online]; available from <http://links.jstor.org/sici?sici=0363-7425%28198901%2914%3A1%3C57%3AATAAAR%3E2.0.CO%3B2-P>; Internet; accessed 8 December 2007.

<sup>117</sup> Kathleen Eisenhardt, “Agency Theory: An Assessment and Review,” *The Academy of Management Review*, vol. 14, no. 1, January 1989 [article online]; available from <http://links.jstor.org/sici?sici=0363-7425%28198901%2914%3A1%3C57%3AATAAAR%3E2.0.CO%3B2-P>; Internet; accessed 8 December 2007.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

become more difficult to measure, a behavior-based contract is more desirable. The amount of information available to oversee the agent's activities plays an important role in determining the most appropriate contract method to govern this relationship. As stated by Kathleen Eisenhardt, one of the foremost experts in management and administrative theory, "The heart of principal-agent theory is the trade-off between the cost of measuring behavior and the cost of measuring outcomes and transferring risk to the agent."<sup>120</sup>

In the case of PMCs, such as Blackwater in Iraq, outcome-based contracts initially made more sense because they sufficiently aligned the preferences or goals of the agent with the principal. The U.S. government needed armed contractors to provide security for key individuals, and PMCs were contracted to provide these services. These outcome-based contracts were appropriate when the outcome was easily measured merely in terms of mission accomplishment. But, as the situation becomes more certain and information is more readily available, behavior-based contracts appear to be more appropriate.<sup>121</sup> Behavior-based contracts require the government to invest resources in information systems to monitor and control the activities of PMCs. Examples of information systems include an increase of contracting officials, embedded personnel, control measures, and coordination mechanisms. A transition to behavior-based contracts and an increase in information systems will assist the government in ensuring that PMCs activities and goals are consistent with those of the U.S. government and military.

The conflict that exists between the principal and agent is an important issue that has to be addressed and resolved. Contract selection and management based on agency theory will assist the government in controlling the actions of PMCs and aligning their goals. The government needs to make every effort to emplace the systems that will properly control the actions of PMCs and reduce the potential negative effects of the

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<sup>120</sup> Kathleen Eisenhardt, "Agency Theory: An Assessment and Review," *The Academy of Management Review*, vol. 14, no. 1, January 1989 [article online]; available from <http://links.jstor.org/sici?sici=0363-7425%28198901%2914%3A1%3C57%3AATAAAR%3E2.0.CO%3B2-P>; Internet; accessed 8 December 2007.

<sup>121</sup> Ibid.



principal-agent relationship. Just because PMCs can fill the demand does not mean that the goals of the principal and agent are congruent. The relationship must be analyzed further to ensure that the proper mechanisms are in place to produce the best possible arrangement for the U.S. government and PMCs. To move beyond this conflict, PMCs will have to prove over time that their actions are consistent with the goals of the government and within the moral and ethical limits of the United States.

## **E. U.S. POLICY CONCERNS**

With this integration of PMCs in military operations, the government is outsourcing the affairs of the state to a private corporation. The government will need to examine the extent to which they will continue to use and rely on PMCs to conduct the affairs of the state. The “use of privatized military actor as a foreign policy tool” may not be in the best interest of the government, and cost effectiveness may not be the correct basis for these matters.<sup>122</sup> Government affairs, foreign policy, and military operations are more than just “achieving greater cost competitiveness.”<sup>123</sup>

Foreign policy is a set of goals that seeks to outline how that particular country will interact with other countries of the world, and to a lesser extent, non-state actors.<sup>124</sup> The policy of the nation is linked to public opinion, values, and historical and legal precedent.<sup>125</sup> With the acceptance and extensive use of PMCs, executing foreign policy has become as much a function of the private sector as it was a function of the public sector. No longer is it presumed that foreign policy remains a function of the state.<sup>126</sup> According to Singer, PMCs and armed contractors are “private actors operating in the public realm of warfare.”<sup>127</sup>

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<sup>122</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 213.

<sup>123</sup> Ibid.

<sup>124</sup> Merriam-Webster Dictionary, [web site online]; available from [www.merriam-webster.com](http://www.merriam-webster.com); Internet; 4 December 2007.

<sup>125</sup> Richard, Payne, *The Clash with Distant Cultures: Values, Interests, and Force in American Foreign Policy* (Albany: State University of New York Press, 1995) 14-15.

<sup>126</sup> Singer, 206.

<sup>127</sup> Ibid., 217.

In executing policy and strategy, government agencies have to continually assess available resources and requirements. As outlined in the Blackwater case study, PMCs are providing a service, and an increase in requirements has forced the government to use them. Foreign policy decisions have created the market demand for PMCs. Other than expansion of the military or a reduction in requirements, the private sector is likely to continue to provide critical resources to the U.S. government. If there was no desire to use PMCs or a demand did not exist for them, then the PMI would not have expanded to the extent that it has. Currently, utilizing PMCs to fill policy requirements is viewed as a valid means to implement policy.<sup>128</sup>

The PMC concept makes perfect business sense; it has worth and value, however, the U.S. government needs to proceed with caution. As referenced in the previous section, PMCs will always have divided loyalties and goals based on the principal-agent conflict. From the principal-agent perspective, it needs to be prudent in its use of PMCs. If the U.S. government chooses to utilize PMCs, then it will have to emplace multiple layers of control measures and coordination mechanisms to ensure that PMCs are carrying out their duties in an acceptable manner and congruent with the goals of the nation.

## **F. IMPACT OF MESSAGES**

With the increased utilization of PMCs, the U.S. government has to consider the impact of the message that the trend of utilizing PMCs is sending. For every action or decision, there is a perceived or actual message that is being sent along with that given action.<sup>129</sup> The message may or may not have a negative impact, but nevertheless, the U.S. government has to consider this critical aspect of outsourcing inherently governmental functions. The U.S. government will have to reinforce to the international community that the expanded use of PMCs does not equate to a lack of commitment by

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<sup>128</sup> George Friedman, "The Geopolitical Foundations of Blackwater," *Outside the Box*, Vol. 4 – Special Edition, October 2007 [article online]; available from <http://www.fxstreet.com/futures/market-review/outside-the-box/2007-10-12.html>; Internet; accessed 20 November 2007.

<sup>129</sup> Phillips Davison, "On the effects of communication," *Public Opinion Quarterly*, vol. XXIII, no. 3 (Princeton: Princeton University Press, Fall 1959), 343-360.

the U.S. government.<sup>130</sup> In addition, the host or supported nation may develop a sense of animosity towards the United States for using contracted personnel to conduct affairs of the nation, such as the Iraqi government's demand for Blackwater employees to leave Iraq.

The U.S. government has to consider all aspects of the message that it is sending when utilizing PMCs to support military operations. The actions of PMCs and armed contractors will directly shape the larger message that the U.S. government is trying to send. In Iraq, the U.S. military's overall goal is to secure the population to give the Iraqi government time to evolve, but heavy-handed operations with aggressive tactics by armed contractors degrade this goal.<sup>131</sup> For example, the recent Blackwater incident on September 16, 2007, where their employees have been accused of shooting 17 innocent Iraqi citizens supports this issue. The government must reinforce with PMCs that all actions have messages and psychological impacts.<sup>132</sup> If the message that is being sent is inconsistent with the desired intent, then the U.S. government must emplace controls to counter the effects of PMCs or ensure their actions are consistent with the overall goals of the operation through effective management of the contract.

Another concern is the adoption of outsourcing by other nations; if this practice is viewed on the international scene as acceptable for the U.S. government, then it becomes acceptable for other states to do the same. In addition, a negative perception or opinion may develop from the perception that PMCs are making money on others' problems. The U.S. government needs to carefully consider the impacts of their actions and the policy to use PMCs in support of U.S. military operations.

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<sup>130</sup> Jennifer Elsea and Nina Serafino, "Private Security Contractors in Iraq: Background, Legal Status, and Other Issues," *CRS Report for Congress* (Congressional Research Service, 21 June 2007), 27.

<sup>131</sup> Three sources were used: Mike Baker, "Cowboy Aggression Works for Blackwater," *Associated Press*, 24 September 2007 [news article online]; available from <http://ap.google.com/article/ALeqM5jiM0qSFLYuMsEGS6gjVvgAnxbsvQ>; Internet; accessed 24 September 2007; Jonathan Finer, "Security Contractors in Iraq Under Scrutiny After Shootings," *Washington Post Foreign Service*, 10 September 2007 [newspaper online]; available from [http://www.washingtonpost.com/wp-dyn/content/article/2005/09/09/AR2005090902136\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2005/09/09/AR2005090902136_pf.html); Internet; accessed 10 February 2007; and Peter Singer, "Counterproductive: Private Military Contractors Harm the Counterinsurgency effort in Iraq," *Armed Forces Journal* (November 2007): 36-39.

<sup>132</sup> Phillips Davison, "On the effects of communication," *Public Opinion Quarterly*, vol. XXIII, no. 3, (Princeton: Princeton University Press, Fall 1959), 343-360.

## G. ACCOUNTABILITY

From a normative standpoint, one major area of concern lies in the accountability of armed contractors and their ability to effectively operate within the legal boundaries of the law. According to Professor Matziorinis, “A PMC is structured solely for commercial profit and is not bound by the codes, rules, and regulations that make a nation’s armed forces unique and accountable.”<sup>133</sup> To further complicate the issue of accountability, a distinct separation of responsibility currently exists between U.S. government agencies and the PMCs. This separation has adversely affected control and accountability. PMCs fulfill their contractual requirements, but basically operate on their own discretion and are not held accountable for their actions. Clearly, these are issues that have resulted from an improper principal-agent relationship between the U.S. government and PMCs.

Accountability is closely tied to regulation and control. The main indicator that there is a lack of regulation over the PMI is that contractors have not been held accountable for inappropriate actions on the battlefield. As in the case when a Blackwater employee, who was drunk inside the Green Zone in Baghdad, shot and killed a guard of the Iraqi vice president on Christmas Eve 2006.<sup>134</sup> No criminal actions were filed; the Blackwater employee was merely fired. This is just one example of many that reinforce the negative notion that PMCs operate in the grey area of law. So, it remains to be determined whether contractors will be held to the laws of the Uniform Code of Military Justice or public law. In this vacuum of regulation and oversight, the possibility of “legal recourse” against PMCs remains unlikely.<sup>135</sup>

PMCs are operating in a grey area, not under the direct control by their contracting agency and surely not under control by the DoD. Government agencies have demonstrated an inability to retain control of those PMCs supporting and operating

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<sup>133</sup> Nicholas Matziorinis and Paolo Nalin, *Private Military Companies: Legitimacy and Accountability* (Montreal: McGill Management, 20 April 2004), 25.

<sup>134</sup> Peter Singer, “Counterproductive: Private Military Contractors Harm the Counterinsurgency effort in Iraq,” *Armed Forces Journal* (November 2007): 36-39.

<sup>135</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 220.

within their own agency.<sup>136</sup> A paradigm exists: government agencies contract the services of PMCs because they are undermanned and unable to resource critical requirements, but the undermanned agencies will also lack the proper resources to provide oversight and control of contractors operating within their agency. The identified lack of regulation and control leads to lack of accountability.

PMCs are a resource provider, and the government needs to ensure that PMCs and contractors are held accountable for their actions by removing any grey area ambiguity that exists in the laws that govern the actions of PMCs. Government agencies need to ensure that PMCs operate within the limits of their contract and conduct their business in an appropriate manner by properly addressing the principal-agent conflict through effective contract management. As PMCs take on additional roles in U.S. military operations, it would be beneficial if control of armed contractors could fall under a single entity, the DoD or DoS (as dictated by the scope of the contract). In October 2007 shortly after the Blackwater incident in Iraq, it was noted that Secretary of Defense Gates desired armed security contractors to fall under a single authority, specifically DoD.<sup>137</sup>

Both the government agency and the PMC have a lot at stake and share a desire to hold its personnel accountable for their actions (policy and performance). The argument within the PMI is that “any firm that acts in an unaccountable or reckless manner would hurt its long-term financial interests and thus would automatically choose against such action.”<sup>138</sup> As stated by Erik Prince (Blackwater USA), “If the guys did anything wrong, they’ll be held accountable.”<sup>139</sup> Contractors are paid a significant amount and should be held to a high standard. Accountability, if appropriately designated, could make the costs

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<sup>136</sup> John Broder and James Risen, “Armed Guards in Iraq Occupy a Legal Limbo,” *The New York Times*, 20 September 2007 [newspaper online]; available from [http://www.nytimes.com/2007/09/20/world/middleeast/20blackwater.html?\\_r=1&ei=5087%0A&em=&en=2101831599e1231f&ex=1190433600&oref=slogin&pagewanted=print](http://www.nytimes.com/2007/09/20/world/middleeast/20blackwater.html?_r=1&ei=5087%0A&em=&en=2101831599e1231f&ex=1190433600&oref=slogin&pagewanted=print); Internet; accessed 24 September 2007.

<sup>137</sup> Eric Schmitt and Thom Shanker, “Pentagon Sees One Authority Over Guards,” *The New York Times*, 17 October 2007, national edition, sec. A1.

<sup>138</sup> Peter Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 224.

<sup>139</sup> August Cole, “Blackwater Lays Out Broader Growth Plans,” *Wall Street Journal*, 15 October 2007, Volume CCL, Number 89, national edition, sec. A3.

so high on the PMCs and armed contractors that if they are legally found to have acted inappropriately or outside their contractual limits, they would face punishment under the UCMJ system.

## **H. REGULATION AND OVERSIGHT**

PMCs have operated in the realm of unknown for many years, but recent media coverage of Blackwater in Iraq has heightened the awareness of the public. Due to this increased awareness of PMC activities, the PMI is at the forefront of topics on Capitol Hill.<sup>140</sup> Regulation is currently under intense scrutiny, and the PMI is being closely examined by the legislative and judiciary branches of our government.<sup>141</sup> Many politicians are urging for an increase in regulation and proper oversight.<sup>142</sup>

As a result of the Blackwater incident on September 16, 2007, the requirements on PMCs operating in Iraq have increased. The additional requirements were outlined in an agreement made between senior officials in the DoD and DoS. This agreement placed an emphasis on coordination and oversight. According to the Pentagon's press secretary, Geoff Morrell, "It [the agreement] will help ensure that all personal security contractors are operating in a manner that is consistent with our mission to secure Iraq by winning the trust and confidence of its people."<sup>143</sup> This agreement is only the initial step in a broader attempt by the government to regulate the activities of PMCs that support U.S. military operations.

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<sup>140</sup> Leslie Wayne, "Heady Day in America for Military Contractors," *International Herald Tribune*, 26 December 2006 [newspaper online]; available from <http://www.ihf.com/articles/2006/12/26/business/weapon.php>; Internet; accessed 15 August 2007.

<sup>141</sup> Two sources were used: Jennifer Elsea and Nina Serafino, "Private Security Contractors in Iraq: Background, Legal Status, and Other Issues," *CRS Report for Congress* (Congressional Research Service, 21 June 2007), 23.; and John Broder and James Risen, "Armed Guards in Iraq Occupy a Legal Limbo," *The New York Times*, 20 September 2007 [newspaper online]; available from [http://www.nytimes.com/2007/09/20/world/middleeast/20blackwater.html?\\_r=1&ei=5087%0A&em=&en=2101831599e1231f&ex=1190433600&oref=slogin&pagewanted=print](http://www.nytimes.com/2007/09/20/world/middleeast/20blackwater.html?_r=1&ei=5087%0A&em=&en=2101831599e1231f&ex=1190433600&oref=slogin&pagewanted=print); Internet; accessed 24 September 2007.

<sup>142</sup> Two sources were used: Elsea and Serafino, 23.; and Anne Flaherty, "Bill targets private contractors in Iraq," *The Herald*, 5 October 2007, Monterey edition, sec. A1.

<sup>143</sup> Eric Schmitt and Paul von Zielbauer, "Accord Tightens Control of Security Contractors in Iraq," *The New York Times*, 5 December 2007 [newspaper online]; available from <http://www.nytimes.com/2007/12/05/washington/05blackwater.html?ex=1197522000&en=41f62d60d5ea3d3a&ei=5070&emc=eta1>; Internet; 6 December 2007.

The U.S. government has to do a better job of regulating the PMI if it intends to continue the trend of privatization of military functions. The legal institutions of our government need to improve the regulation on PMCs by removing the legal ambiguity and emplace the proper laws to govern the actions of PMCs and armed contractors that operate in support of U.S. military operations. At a minimum, regulating the PMI will include the establishment of clear lines of control, accountability, and laws that govern the actions of PMCs. PMCs need to be held accountable for inappropriate actions under a revised legal framework that resides in U.S. military law (UCMJ). PMCs cannot remain and exist in the grey area between military and public law. A revised legal framework is discussed in Chapter VII.

## **I. EFFECTS ON THE MILITARY**

Along with previously identified effects in the public sector, expansion of PMCs are likely to have effects on the military. PMCs may negatively impact operations, and the military may develop an unintentional reliance on PMCs. This reliance may also spill over and affect the retention of highly skilled personnel in the military. Over-reliance on PMCs may degrade the capabilities of the uniformed military. The military must not become dependant on PMCs and lose the ability to conduct certain types of missions. Once a requirement is handed over to PMCs, it will be difficult for the military to immediately regain lost capabilities, especially as it is conceivable that PMCs would seek to protect their portion of the market. An example of a potential lost capability is in the realm of armed personal security. Armed security is one area that the government has outsourced extensively in Iraq to PMCs such as Blackwater.

With respect to training and manning, the military has to be wary of drift in the roles that PMCs perform. As contractors become proficient in one area, they will seek to become proficient in other areas. The military must always remember that PMCs are profit-driven entities; it is in a PMCs best interest to assume new roles and maximize profit. It will be incumbent upon the military to determine which skill sets are important for it to retain and which could be absorbed by PMCs. The skill sets of special operations forces, for example, are an important investment by the government and take a long time

to develop. How would the military protect this skill set and ensure that it does not become the training ground for the PMI? It may, for example, need to refine the incentive structure to target and retain the highly skilled individuals that PMCs desire.

It is conceivable that there will be pushback from the uniformed military when integrating PMCs in U.S. military operations. One can assume that the U.S. military, like any bureaucracy, will resist change.<sup>144</sup> If change is pursued, all efforts will be needed to coordinate the force at all levels, especially to minimize the principal-agent problems. The government will also have to consider what balance it wishes to maintain between uniformed personnel and contractors. The right mix and total number of contractors may be situation-dependent, in order to maximize the effectiveness and efficiency of the force. The determination of the right mix between uniformed and armed contractors is identified as a potential area for further exploration.

## **J. BENEFITS OF OUTSOURCING**

Despite the concerns that arise from utilization of PMCs and armed contractors by the U.S. government in military operations, contracting does provide some benefits to those agencies. The majority of the benefits are focused around the usefulness of PMCs and the flexibility that contracting provides. The U.S. military is operating in a period where the policy requirements outweigh the available military resources.<sup>145</sup> As previously identified, this gap in resources is one of the main reasons that contracting has moved to the forefront as a viable option. The contracting process does provide operational flexibility to the government. This flexibility allows government agencies to simply contract PMCs to fill those areas of deficiency. Under the contracting process, highly skilled contractors are easily obtained for a specific mission and set amount of time (this reinforces the aspects of surge). This ease of filling requirements and

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<sup>144</sup> James Wilson, *Bureaucracy* (USA: Basic Books, 1989), 101.

<sup>145</sup> Defense Science Board Task Force, *Deployment of Members of the National Guard and Reserve in the Global War on Terrorism*, September 2007 [report online]; available from <http://www.acq.osd.mil/dsb/reports.htm>; Internet; accessed 22 November 2007.



augmenting to reduce demands on the force clearly identifies the reason that outsourcing has grown to the extent it has, but this benefit also has to be weighed against all other critical issues.

Contracting PMCs does bring highly trained and specialized personnel back to the operation when their services are called upon. They provide specific skill sets for specific requirements and missions. PMCs and the contracting process have established their worth and value to the U.S. government. As U.S. military spokesman Rear Admiral Fox recently stated, “Quite frankly, the presence of a number of these people [contractors] here in Iraq are essential to a lot of our operations.”<sup>146</sup> Contracting PMCs to fill requirements and force gaps can blend of efficiency (ease of use) and effectiveness (gets the job done). However, in the case of PMCs supporting U.S. military operations, it has yet to be determined whether the efficiency and effectiveness aspects of contracting are more linked to profit and tangible incentives than the call to duty. From the principal-agent perspective, this conflict is a significant issue for the U.S. government.

The U.S. government has become accustomed to utilizing PMCs, but has also found itself in a precarious position with a developed reliance on their use. PMCs are now essential, on many levels, to the successful execution of most DoD and DoS operations. Under current policy, the U.S. government needs PMCs and armed contractors to support military operations, but the underlying issues related to the use of their services as outlined in this chapter raise considerable concern.

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<sup>146</sup> Agence France Presse, “US involved in four inquiries into Blackwater,” *Agence France Presse*, 1 October 2007 [news article online]; available from <http://afp.google.com/article/ALeqM5jx-oJeYQrtfy7xp47Y2gssZOj6xw>; Internet; accessed 1 October 2007.

## **VI. BUILDING FRAMEWORKS FOR PRIVATE MILITARY COMPANIES**

The central issue thus is about values-about how to mesh often different public and private values into a smoothly functioning system and how to achieve this result without sacrificing the public interest. – *Donald Kettl*

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The previous chapter discussed the critical issues involved in the use of private military force as a means to accomplish public policy ends. The identification of these critical issues is a necessary first step before decisions regarding the expanded use of private military force can be undertaken by government policy makers. This chapter intends to explore further the ambiguous nature of the legal and contracting frameworks used prior to the Defense Authorization Act of 2007 and to examine how PMCs integrated or failed to integrate into those frameworks. It further examines how these frameworks need to be adapted in order for the U.S. government to consider using PMCs in expanded roles to achieve public policy ends. The need for the U.S. government to establish clear and transparent frameworks within which PMCs can operate is necessary if they are to achieve public policy ends in a manner that is perceived to be legitimate. The chapter concludes by discussing the need to fully integrate PMCs into the government's policy framework in order to achieve optimal foreign policy outputs.

### **A. LEGAL JURISDICTION AND ENFORCEMENT FRAMEWORKS**

The existence and legitimacy of the PMI is well grounded in historical and legal precedent. Indeed, the employment of private military forces by the United States has played a major role in the shaping of its national history. The legal basis and continuing precedent for the use of private military force in support of national objectives during wartime can be found in Article I, Section 8 of the U.S. Constitution which grants Congress the power to “To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.” Contractors have gone to war in support of

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<sup>147</sup> Donald Kettl, *Government by Proxy* (Washington DC: Congressional Quarterly, 1988), 42.

U.S. military forces since the beginning of the republic and the “United States has a long history of applying military law to contractor organizations and personnel.”<sup>148</sup> Why then is there so much ambiguity and confusion with regards to the legal status of PMCs? Why has the current legal framework failed to regulate the PMI by enforcing existing laws and regulations?

The answer lies in the interpretation of U.S. law regarding military contractors accompanying U.S. military forces. According to Lindemann, the Articles of War, the military legal framework used prior to 1950, addressed private military contractors accompanying U.S. military forces and subjected them to military law only during times of war.<sup>149</sup> When the Uniform Code of Military Justice became law in 1950, this was amended to include periods when no formal war had been declared; “persons serving with, employed by, or accompanying the armed forces outside the United States” fell under UCMJ jurisdiction.<sup>150</sup> However, this clarification proved short-lived and over the next two decades, U.S. courts “eviscerated the portions of the UCMJ that ostensibly applied to contractors working for the armed forces.”<sup>151</sup> At the heart of the issue was the constitutionality of extending court-martial jurisdiction over civilians in peacetime, without a formal declaration of war by Congress. This rejection of that portion of the UCMJ by the federal courts meant in practical terms that the legal status of contractors would be ambiguous in combat zones outside of U.S. territory. Contractors would not fall under the U.S. criminal code (domestic or UCMJ), nor under the host nation’s laws because they were supporting U.S. military operations.

This meant that “contractors fell into a legal limbo in which their behavior went largely unregulated.”<sup>152</sup> Motivated by reports of contractor involvement in illicit activities in Bosnia in the late 1990s, Congress moved to clarify the ambiguous legal status of contractors serving U.S. foreign policy interests overseas by passing the Military

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<sup>148</sup> Marc Lindemann, “Civilian Contractors under Military Law,” *Parameters* (Autumn 2007): 83-94.

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*

Extraterritorial Jurisdiction Act (MEJA) in 2000.<sup>153</sup> This law attempted to extend the jurisdiction of the domestic legal framework to U.S. citizens serving overseas with the DoD. However, implementation proved difficult because of continuing ambiguity regarding contractors who worked overseas supporting federal agencies other than the DoD. In reality, MEJA did little to ensure the enforcement of the law because it separated the legal jurisdiction and the legal enforcement mechanisms between different federal agencies. Hence, even though the DoD might have been the federal agency best positioned to enforce the law in a particular country, the Department of Justice was tasked to do so because domestic criminal law, under which contractors fell, was in its jurisdiction. This problem appears to have finally been resolved with the recent passage of the 2007 Defense Authorization Act.<sup>154</sup> This act clarifies the application of the UCMJ and expands its jurisdiction to civilian contractors “in times of declared war or contingency operation,” effectively granting both jurisdiction and enforcement responsibilities to the U.S. military (DoD).<sup>155</sup>

Now that the legal status of contractors has been clarified and a new jurisdictional framework has been established, it is the responsibility of the DoD to create an implementation framework for enforcing the UCMJ as it applies to PMCs. The best way to enforce the UCMJ as a means of regulating contractor behavior is “to define the limits of the UCMJ’s jurisdiction, in terms of personnel, substance, and enforcement authority” through a new contracting framework and DoD regulation specifically written to address PMCs supporting U.S. military operations.<sup>156</sup> The next section will discuss what needs to happen in the context of the contracting framework so that the U.S. government can align contractor behavior and accountability within the context of the UCMJ. In doing so, the current legal ambiguities and ethical controversies surrounding companies such as the case of Blackwater may fade into the background as the grey areas are reduced and PMCs are held accountable for their actions under U.S. military law.

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<sup>153</sup> Military Extraterritorial Jurisdiction Act of 2000, *Public Law 106-523*, 22 November 2000.

<sup>154</sup> Marc Lindemann, “Civilian Contractors under Military Law,” *Parameters* (Autumn 2007): 83-94.

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*

## B. CONTRACTUAL FRAMEWORKS

With the enactment of the 2007 Defense Authorization Act, the U.S. Congress has defined the legal framework that clarifies the legal status of contractors on the battlefield and further assigns jurisdictional and enforcement responsibilities to a single government agency, the DoD. Now that this has been done, the question becomes one of implementation. How will the DoD enforce the law and provide accountability and control of all PMCs supporting U.S. military operations? The answer to this question is especially relevant in light of recent talk about expanded roles for PMCs, possibly including combat in irregular warfare operations or low intensity conflicts. Before these expanded roles can even be considered a new contracting framework for public-private partnership in the use of force is needed. Conceptualizing and then implementing this new contracting framework will result in expanded control and accountability of PMCs and armed contractors. This is a necessary and logical next step in the process to better regulate PMCs by the U.S. government.

Aside from implementing the new legal framework and clarifying contractor legal status under the UCMJ, adjusting the contracting framework is the most important change that would enable the U.S. government to increase PMC oversight and accountability. In agency theory, the contract is the primary control mechanism. As identified in the section on principal-agent conflicts in Chapter VI, the contract attempts to define the relationship between the principal and the agent in order to resolve the agency problem to both parties satisfaction.<sup>157</sup> Under the previous contracting framework, the military “attempted to formulate a coherent doctrine governing contractor oversight,” however, these attempts fell short of effectively providing adequate doctrine to guide the actions of PMCs.<sup>158</sup> Hence, the contract management framework itself was

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<sup>157</sup> Kathleen Eisenhardt, “Agency Theory: An Assessment and Review,” *The Academy of Management Review*, vol. 14, no. 1, January 1989 [article online]; available from <http://links.jstor.org/sici?sici=0363-7425%28198901%2914%3A1%3C57%3AATAAAR%3E2.0.CO%3B2-P>; Internet; accessed 8 December 2007.

<sup>158</sup> Marc Lindemann, “Civilian Contractors under Military Law,” *Parameters* (Autumn 2007): 83-94.

lacking in control mechanisms meant to solve the agency problem. This manifested itself in military contracting doctrine and operations that “continues to be, accomplished through a rather convoluted system.”<sup>159</sup>

In order to fix this convoluted system, the government needs to consider contracts that are behavior-based as opposed to outcome-based in conflict areas such as Iraq. The reason for this is that environmental uncertainties and risks appear to be subsiding as the U.S. military presence lengthens. Additionally, information systems have become more established and the government is better able to monitor its contracted agents. In 2003, this was not the case and the award of outcome-based contracts by various federal agencies was probably appropriate because of the uncertain operating environment and lack of information in which PMCs were then operating. These outcome-based contracts aligned the organizational goals of the government agencies and their agents but didn’t necessarily align with the overall strategic goals of the United States. An example of this would be the Blackwater case study mentioned earlier. Blackwater’s goal, to provide security to its principals, aligned well with the goals of the principals it was contracted to protect. However, the goal of securing the principal at the agency level by any means necessary detracted from the overall U.S. strategic and foreign policy goal of protecting the Iraqi population and securing Iraq. By moving back towards a behavior- based contracting framework, the U.S. government will potentially have the necessary information systems to “curb agent opportunism because the agent will realize that he or she cannot deceive the principal.”<sup>160</sup> The U.S. government already appears to be moving in this direction. The DoS, for instance, recently announced that it would be installing video cameras in all security contractor vehicles and would be assigning Diplomatic Security Officers to security convoys in an effort to improve oversight.<sup>161</sup>

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<sup>159</sup> Marc Lindemann, “Civilian Contractors under Military Law,” *Parameters* (Autumn 2007): 83-94.

<sup>160</sup> Kathleen Eisenhardt, “Agency Theory: An Assessment and Review,” *The Academy of Management Review*, vol. 14, no. 1, January 1989 [article online]; available from <http://links.jstor.org/sici?sici=0363-7425%28198901%2914%3A1%3C57%3AATAAAR%3E2.0.CO%3B2-P>; Internet; accessed 8 December 2007.

<sup>161</sup> John M. Border, “State Dept. Plans Tighter Control of Security Firm,” *The New York Times*, 6 October 2007 [newspaper online]; available from <http://www.nytimes.com/2007/10/06/washington/06blackwater.html>; Internet; accessed 10 December 2007.

A new contracting framework utilizing behavior-based contracts needs to specifically address the two primary sub-components of that framework. The first component is the principal in the form of the U.S. government and its acquisitions personnel. The second component is the agent in the form of the PMCs and their contractors. Both need to have a written roadmap consisting of approved doctrine that implements the legal framework noted above as well as a clear understanding of the contract. On the principal side of the house, the U.S. government, according to Lindemann, needs “to classify offenses under the UCMJ into felony and non-felony categories.”<sup>162</sup> Ultimately, the military should undertake a revision of its contractor-related doctrine, distinguishing between different types of offenses and clearly stating the offenses for which contractors (civilians) supporting U.S. military operations may face prosecution under the UCMJ. It will also be important to include a description of these offenses within the military contracts to ensure that the civilians involved understand the extent of their exposure to the UCMJ.<sup>163</sup>

On the agent side of the house, PMCs need to ensure that their employees are fully trained on the laws of war and rules of engagement (ROE) and understand the law under the UCMJ. In addition to this, they need to be well versed on the specifics of the written contract itself. In order to ensure that this training and education occurs, the government should establish a certification process with scenario-based testing for both the individual contractors and contractor leadership.

Once this new contracting framework is established, it is critical that the contract is aggressively managed by the U.S. government (principal). A new system of contract management needs to be put in place that gives the contracting officer’s representative (COR) expanded oversight and UCMJ authority. This may necessitate the establishment of additional acquisition personnel billets and systems to oversee an increasing number of

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<sup>162</sup> Marc Lindemann, “Civilian Contractors under Military Law,” *Parameters* (Autumn 2007): 83-94.

<sup>163</sup> Ibid.

contracts, but moves have already been made in this direction with the Army recently announcing that it will expand its contracting staff by 1,400 personnel.<sup>164</sup>

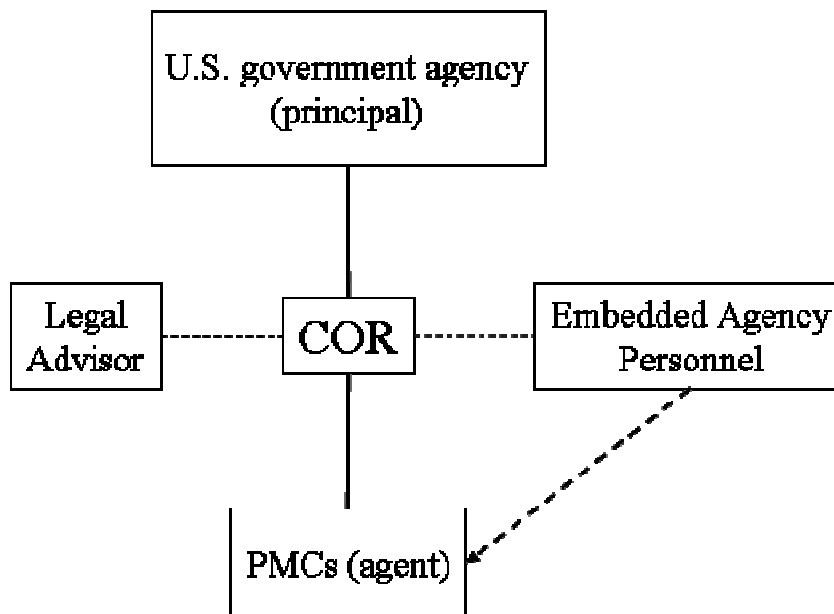


Figure 3. Contract Management and Oversight Diagram

For proper management of the contract, acquisitions and agency personnel need to be forward deployed and embedded with PMCs. These personnel will provide the necessary oversight and accountability of PMCs in the conflict area. The contract management and government agency personnel will form a cell and be integrated into the revised contractual framework. A suggested organizational structure for the oversight cell, as depicted in Figure 3, consists of a contracting officer's representative, legal advisor, and embedded government agency personnel. This type of cell would be best suited to regulate the activities of PMCs by incorporating the legal and agency specific oversight mechanisms on PMCs.

By implementing a revised contracting framework, the expanded use of PMCs in combat operations would have a better chance of success; the negative aspects of contracting are likely to be mitigated while the positive aspects could be maximized. Under these conditions, the legitimacy and use of private military forces could be kept

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<sup>164</sup> Colorado Springs Gazette, "Army Contracting Staff to Grow by 1,400," *Colorado Springs Gazette*, 7 December 2007, national edition, sec. A20.



within, and only within, this framework and under strict control. What this means is that PMCs would operate only with the consent of the U.S. government and its agencies, and legitimacy would flow only from the government to the PMC. However, these revised frameworks need to be balanced and kept from sacrificing the unique operational capabilities and advantages brought to the table by PMCs. The costs of regulation and oversight will likely be high for the government, but the risks involved for the government without them are likely to be even higher.

### **C. PRIVATE FORCE INTEGRATION INTO PUBLIC FORCE STRUCTURE**

The integration of PMCs within the government's framework, the next logical step in the use of private force as a means to public ends, can only occur when the legal and contracting frameworks discussed above have been revised to provide clarity of duties and responsibilities for both the principal and agent. The extent to which the U.S. government could integrate PMCs into U.S. military operations is divided into two distinct aspects. One aspect is based on the limits and capabilities of PMCs, and the other is based on the willingness of public and government to expand the authority of PMCs.

The expanded roles that PMCs and armed contractors could perform are widespread, only limited by the decision and authority to do so. PMCs have demonstrated a willingness to expand and meet the demand, therefore from the PMCs perspective, the extent to which PMCs and armed contractors can be utilized is purely determined by the U.S. government. In a decision to expand the roles, the U.S. government needs to determine the optimum balance between uniformed soldiers and armed contractors. The optimum balance would retain critical capabilities within the military, but also maximize benefits of contracted personnel. According to Singer, "At the end of the day, it's really about fundamental choices that the nation needs to make: What aspects of your national security do you keep within the control of your government?"<sup>165</sup> As previously discussed, revised frameworks with proper oversight

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<sup>165</sup> Mike Baker, "Cowboy Aggression Works for Blackwater," *Associated Press*, 24 September 2007 [news article online]; available from <http://ap.google.com/article/ALeqM5jiM0qSFLYuMsEGS6gjVvgAnxbsvQ>; Internet; accessed 24 September 2007.

would increase the legitimacy of PMCs in the eyes of the American public and international community. This increase in legitimacy would enable the U.S. government to utilize PMCs in expanded roles, potentially combat.

One would assume that PMCs are likely to focus on providing services in specialized areas that require extensive training, such as the technical, high risk areas of security, intelligence, and irregular warfare operations. These areas in the privatized military market maximize the capabilities of highly skilled contractors – most are former special forces operators – and have the most lucrative contracts with the largest profit margins. PMCs are profit-driven organizations, and this fact will always be a component of their decision matrix, so the government must also consider this aspect when calling on PMCs.

There is no indication that there is a deviation from national interests and policy by using PMCs, but to preserve goal congruence, contractors should never operate independent from governmental supervision and oversight. Responsibility to policy adherence and accountability is directly tied back to the specifics of the contract and the ability of the U.S. government agencies to manage the contract. Effective management of the contracts and an increase of control measures would go a long way in ensuring that the PMCs are fulfilling the work in an appropriate and acceptable manner.

As previously discussed, the U.S. government recently took steps to ensure that the rules (ROE), codes (UCMJ), and regulations (policy and doctrine) for PMCs are similar to those that govern the actions of DoD personnel operating in combat zones. However, the legal framework that PMCs operate under is still ambiguous and does not hold them accountable for their actions. Reform of these areas will not only increase the accountability, but also cohesion of the uniformed and private military forces. The regulatory process should move swiftly to build the legal and contractual frameworks that reside over PMCs and hold contractors accountable for their actions. Only by building the legal and contractual frameworks, integrating PMCs into the command structure, and constantly assessing and reassessing the contracts can the utilization of PMCs in U.S. military operations be accepted as a valid means by the U.S. government.

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## **VII. CONCLUSION**

### **A. SUMMARY OF WORK**

The introductory chapter framed the thesis by providing the purpose and scope of the work. Supporting research questions, assumptions, and trends (expansion of PMI and reliance on PMCs by the U.S. government) were identified. The research question that guided this work is the following: To what extent has the government considered privatization as a viable option to satisfy the force requirements of U.S. sanctioned irregular warfare operations and low intensity conflicts?

The second chapter outlined the historical and legal precedent of privatization, and identified several world events that fueled the re-emergence of the PMI in the modern era. U.S. foreign policy decisions are expanding the PMI, but also influencing the degree to which the U.S. government is likely to rely on their services. The increasing role of PMCs in national security and military operations is expected to continue in the foreseeable future.

The third chapter provided a current snapshot of the PMI by taking a closer look at the roles of PMCs and trends in contracting. The numbers of PMCs and armed contractors supporting U.S. military operations clearly indicate reliance by the U.S. government on their services. There is an ambiguous legal framework; PMCs operate under an immunity umbrella that is provided by the U.S. government and Coalition Provisional Authority Order 17.

The fourth chapter presented a case study of Blackwater USA. Blackwater epitomizes the PMI and follows the previously identified trend of expansion and growth. The actions of Blackwater and its employees have been continually scrutinized in the U.S. media.

The fifth chapter explored the critical issues that would influence a decision by policy makers to utilize PMCs and armed contractors in support of U.S. military operations. This analysis addressed a combination of government, military, and public

concerns with the PMI. The U.S. government needs to carefully consider these issues before expanding the use of PMCs and armed contractors in U.S. military operations.

The sixth chapter outlined the frameworks that would allow PMCs to effectively integrate in U.S. military operations. These legal and contractual frameworks need to be revised in order for PMCs in expanded roles to be considered a viable option by the U.S. government. The roles that PMCs and armed contractors could perform are widespread and only limited by the authority given to them by the U.S. government. The PMI has clearly demonstrated a willingness to expand and meet the demand, therefore the extent to which PMCs can be utilized is purely determined by the U.S. government.

## **B. FURTHER EXPLORATION AND POTENTIAL TOPICS**

Further exploration is needed in many of the areas that were presented in this thesis. Some of these areas are potential thesis topics on their own, and others could be expanded upon with additional research. This section suggests those areas and potential thesis topics.

Analysis and additional research on the critical issues identified in this thesis would benefit those interested in determining actual and perceived impact of PMCs on U.S. military operations.

As identified in this thesis, the trends of PMI expansion and reliance on PMCs by the U.S. government are a direct result of foreign policy decisions and inadequate resources in the public sector. The U.S. government has turned to the private sector – since other options are politically less feasible – since it is unable to fill the requirements of its adopted foreign policy. Under this argument, research on the use of PMCs, as opposed to increasing the numbers of active duty soldiers, would provide clarity to the extent to which the government can and should continue to consider privatization as a viable option.

Lastly, further exploration and research to identify the most useful roles that PMCs could fill within the U.S. government and military would be worthwhile. Additionally, the degree to which PMCs perform the identified roles should be based on

supporting analysis of which roles and functions the government should retain, so as not to lose any critical capabilities to the private sector. This research would assist in determining the right mix of private and public forces to maximize efficiency and effectiveness (performance) of the total force.

### **C. FINAL COMMENTS**

In an era of expanding foreign policy commitments, the government will be forced to either expand its stretched public military forces or to lessen its commitments. It appears unlikely that U.S. foreign policy commitments will decrease in the coming years, and support for the former choice does not exist. Therefore, the logical and most likely alternative is to contract with a new type of volunteer; PMCs and armed contractors obviate the need for a draft.

The U.S. government must carefully consider the issues involved with the use of PMCs in military operations and take appropriate measures to control their actions. The legal and contractual challenges that the principal-agent relationship creates are significant. The U.S. government must address and consider these aspects of privatization when utilizing PMCs. It appears that PMCs are ready to make the transition to the next level of participation in U.S. military operations. This expansion of PMC roles may be a natural progression in privatization of military functions in support of legitimate governments. Ultimately, history will have the final say, but the use and expansion of the PMI may be viewed as the next revolution in military affairs of our generation.

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